1021

Map.

SUPREME COURT OF THE UNITED STATES.

No. ~~152~~. 75.

SAMUEL S. BACON ET AL., PLAINTIFFS IN ERROR,

vs.

WILLIAM HART, JR.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE NORTHERN DISTRICT OF CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

Mo to dismiss
Jan 10/62

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1023

SUPREME COURT OF THE UNITED STATES.

No. 152.

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vs.

WILLIAM HART, Jr.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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1025

UNITED STATES OF AMERICA,
Northern District of California.

Pleas before the judges of the circuit court of the United States, for the districts of California, in and for the Northern district of said State, at the court-house in the city of San Francisco, on the 23d day of February, A. D. 1858, in the stated January term.

Witness the Hon. M. Hall McAllister, judge of said court; Hon. Ogden Hoffman, U. S. dist. judge.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Be it remembered, that at the stated January term, A. D. 1858, before the Hon. M. Hall McAllister and Hon. Ogden Hoffman, judges of the circuit court of the United States for the districts of California, in and for the northern district, at the court-house in the city of San Francisco, came William Hart, jr., by William Hart, his attorney, and brought into said court, before the aforesaid judges thereof, his certain bill, complaint, or declaration against Samuel H. Clarke, J. T. Thompson, William Goddard, William Jones, Thomas E. Finney, William S. Clarke, R. H. Woods, Henry H. Smith, Samuel E. Strode, R. H. Wright, O. A. Olmstead, John Doe and Richard Roe, defendants, of a plea of trespass and ejectment, which said bill was filed September 10, A. D. 1857, and follows in these words, that is to say:

Complaint.

In the Circuit Court of the United States for the districts of California, Northern District.

WILLIAM HART, jr., Plaintiff,
vs.
SAMUEL H. CLARKE, J. T. Thompson, William Goddard, William Jones, Thomas E. Finney, William S. Clarke, R. H. Woods, Henry H. Smith, Samuel E. Strode, R. H. Wright, O. A. Olmstead, John Doe and Richard Roe, Defendants.

CITY AND COUNTY OF SAN FRANCISCO, *ss.*

William Hart, junior, who is a citizen of the State of New York, and a resident of Manilla, complains of Samuel H. Clarke, J. T. Thompson, William Goddard, William Jones, Thomas E. Finney, William S. Clark, R. H. Wood, Henry H. Smith, Samuel E. Strode, R. H. Wright, O. A. Olmstead, John Doe and Richard Roe, whose names are unknown to the plaintiff, and who

prays that when he shall have ascertained the names of said persons, that is, John Doe and Richard Roe, that they may be inserted in this complaint, and the said parties made defendants hereto, who are residents of the county of Contra Costa, in the Northern district of California, as defendants, and for cause of complaint alleges as follows: That heretofore, to wit, on the 4th day of January, 1854, the said plaintiff was lawfully possessed and the owner in fee of the following real estate: that is, all that western half of that piece, parcel, or tract of land situated, lying, and being in Contra Costa county, State of California, on the bay of Suisun and river San Joaquin, and bounded as follows, viz., on the one side by the lands of Salvio Pacheco, on the other side by the lands of Jose Noriega, and on the other side by the river of San Joaquin and bay of Suisun, and on the other side by the Las Lomericas, (the hills,) and generally known as the New York rancho, or Los Megenos, or the Mesa grant, together with the appurtenances, of the value of $50,000, and being so possessed thereof as aforesaid, the said defendants, afterwards, to wit, on the fourth day of January, 1854, with force and arms, unlawfully entered in and upon the said premises, and forcibly and unlawfully ejected the plaintiff therefrom, and do still continue unlawfully to withhold the possession of the said premises from the said plaintiff, to the damage of him the said plaintiff, in the sum of twenty thousand dollars.

Wherefore, the plaintiff demands judgment against the said defendants, and that he recover the possession of said premises, together with his damages sustained as aforesaid, and the costs of this action.

Dated San Erancisco, 9 Sept., 1857.

W. HART, *Att'y for Pl'ff.*

Endorsed: Filed Sept. 10th, 1857.

GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

Summons.

Summons.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the districts of California, Northern District.

WILLIAM HART jr., Plaintiff,
vs.
SAMUEL H. CLARK et al., Defendants.

Action brought in the said circuit court, and the complaint filed in the city and county of San Francisco, in the office of the clerk of said circuit court.

The President of the United States of America, greeting: To S. H. Clark, J. T. Thompson, Wm. Goddard, Wm. Jones, Thos. E. Finney, Wm. S. Clark, R. H. Woods, Henry H. Smith, Samuel E. Strode, R. H. Wright, O. A. Olmstead, John Doe and Richard Roe:

You are hereby required to appear in an action brought against you by the above named plaintiff in the circuit court of the United States for the districts of California, and to file your plea, answer or demurrer to the complaint filed therein, (a copy of which accompanies this summons,) in the office of the clerk of said court, in the city and county of San Francisco, within ten days, (exclusive of Sundays and the day of service,) after the service on you of this summons, if served within this county, or if served out of this county, then within forty days, or judgment by default will be taken against you. The said action is brought to recover a certain lot or tract of land particularly described in the complaint, also twenty thousand dollars damages, and costs of suit; and if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the U. S. of America, this tenth day of September, A. D. 1857, and of our independence the 82d.

[SEAL.] GEO. PEN JOHNSTON, *Clerk*,
Attest: Pr. CUTLER McALLISTER, *D. C.*
San Francisco, Sept. 23d, 1857.

I hereby specially depute Dan'l W. Swain to serve the within summons.

P. L. SOLOMON,
U. S. Marshal.

Endorsed: Filed Nov'r 21st, 1857.
GEO. PEN JOHNSTON, *Clerk.*

I hereby certify, that I received the attached summons and complaint the 25th day of September, 1857, and did, on the 28th day of Sept'r, 1857, serve a certified copy of the summons, attached to a certified copy of the complaint, on the following named persons, in manner as follows, to wit:

On J. N. White, Mrs. C. R. Bird, Simeon Woodruff, S. M. Helstrom, Samuel Bacon, Henry H. Smith, Jas. H. Clark and David E. Walker, by giving each of them a certified copy of the summons, attached to a certified copy of the complaint, personally. And on Thomas C. Finney, Geo. Bryant, William Goddard and Wm. S. Clark, by giving a certified copy of the summons, attached to a certified copy of the complaint, to each of their wives. Wm. Jones not found in the country.

P. L. SOLOMON, *U. S. Marshal*,
By DAN'L W. SWAIN, *Dep'ty.*

And afterwards, to wit, on the 9th day of November, A. D. 1857, the following stipulation was placed on file in said cause by direction of the counsel for the respective parties.

Stipulation as to service and pleadings.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss.
In the Circuit Court of the United States for the Northern District of California.

WILLIAM HART, jr., }
v. }
SAMUEL BACON et als. }

It is agreed that in the above entitled cause, J. N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Helstrom, Samuel Bacon, H. H. Smith, James H. Clark and David E. Walker have been duly served with process in this case, and that Thomas E. Finney, Wm. S. Clark, Wm. Goddard and George Bryan have been imperfectly served. John Wilson, attorney for the above named defendants, agrees to appear for those imperfectly served, as well as for those properly served as above stated, and that all these defendants are to be entered by consent in the writ and declarations as the defendants to this suit, and that the time for pleading is extended to the 4th day of December, 1857, on or before which day the said defendants may plead jointly or severally, in person or by attorney, any plea or pleas which, under the law and facts, they are or were on first service of the said writ entitled to plead, suffering no prejudice by the extension of the time to those who have been already served; and this agreement is to be filed in the case as evidence thereof.

Dated San Francisco, 9th Nov'r, 1857.

WM. HART,
Att'y for Pl'ff.
JOHN WILSON,
Att'y for Def'ts.

Endorsed: Filed Nov'r 9th, 1857.
GEO. PEN JOHNSTON, *Clerk,*
For CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 21st day of November, A. D. 1857, comes the plaintiff, by his attorney, and files his amended bill of complaint in the words and figures following, to wit:

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Amended Complaint.

In the Circuit Court of the United States for the districts of California, Northern District.

WILLIAM HART, jr., Plaintiff,
v.
SAMUEL BACON, DAVID E. WALKER, J. N. Wright, Thomas E. Finney, Mrs. L. E. Bird, William S. Clark, Simon Woodruff, William Goddard, S. M. Helstrom, George Bryan, H. H. Smith, J. C. Mitchell, James H. Clark, John Doe, and Richard Roe, Defendants.

Amended Complaint as per Agreement.

CITY AND COUNTY OF SAN FRANCISCO, *ss.*

William Hart, Jr., who is a citizen of the State of New York, a resident of Manilla, complains of Samuel Bacon, J. N. Wright, Mrs. E. L. Bird, Simon Woodruff, S. M. Helstrom, H. H. Smith, James H. Clark, David E. Walker, Thomas E. Finney, Wm. S. Clark, Wm. Goddard, J. C. Mitchell, John Doe, and Richard Roe, whose names are unknown to the pl'ff, and who prays that when he shall have ascertained the names of said persons, that is, John Doe and Richard Roe, that they may be inserted in this complaint, and the said parties made defendants hereto; that all the said defendants are residents of the county of Contra Costa, in the northern district of California, as defendants, and are citizens of the State of California, and for cause of complaint, alleges as follows: That heretofore, to wit, on the 4th day of January, 1854, the said pl'ff was lawfully possessed, and the owner in fee of the following real estate, that is, all that western half of that piece, parcel or tract of land situated, lying and being in Contra Costa county, State of California, on the bay of Suisun, and river San Joaquin, and bounded as follows, viz: On the one side by the lands of Salvio Pacheco, on the others by the lands of Jose Noriega, and on the other side by the river San Joaquin, and on the other side by the "Los Lomerias," (the hills,) and generally known as the New York rancho, or Los Megenos, or the Mesa grant, together with the appurtenances of the value of $50,000, and being so possessed thereof as aforesaid, the said defendants, citizens of the State of California as aforesaid, afterwards, to wit, on the 4th day of January, 1854, with force and arms, unlawfully entered in and upon said premises, and forcibly and unlawfully ejected the pl'ff therefrom, and do still continue unlawfully to withhold the possession of the said premises from the said pl'ff, to the damage of him, the said plaintiff, in the sum of twenty thousand dollars. Wherefore the pl'ff demands judgment against the said defendants, and that he recover the possession of said premises, together

with the damages sustained as aforesaid, and the costs of this action.

Dated San Francisco, 9 Nov'r., 1857.

WM. HART,
Att'y for Pl'ffs.

Endorsed: Filed November 21st, A. D. 1857.
GEO. PEN JOHNSTON, *Clerk.*

And afterwards, to wit, on the 4th day of December, the defendants filed the following answer, to wit:

Answer.

UNITED STATES OF AMERICA,
State of California, County and City of San Francisco, ss.

In the Circuit Court of the United States for the districts of California, Northern District.

WILLIAM HART, jr., Pl'ff,
v.
SAMUEL S. BACON et als., Def'ts.

4th Dec., 1857.

The defendants in the above entitled action come in their own proper persons, and say this honorable court ought not to have or maintain any further cognizance of the action aforesaid, because they say they believe, and from such belief state the same to be so in fact, that the plaintiff has no real interest in said cause, nor in the premises sued for therein, nor had he any such interest therein at the time of bringing this suit, but claims title to the said premises solely under and by virtue of a conveyance made to him for the same by one J. D. Stevenson, who at the time of making the same was and is yet a resident and citizen of the State of California, and who is the real plaintiff in interest, and for whose use and benefit this action is brought; the said conveyance from the said Stevenson to the said plaintiff was made collusively and fraudulently, with the sole intent and purpose of enabling the said plaintiff to bring this action in this court for the use and benefit of the said Stevenson, instead of bringing the same in one of the courts of the State of California, thereby transferring the jurisdiction of this case from the courts of California to this court, which is contrary to the constitution and laws of the United States; and this the said defendants are ready to verify. Wherefore they pray

judgment whether this court can or will take further cognizance of the action aforesaid.

(Signed) WILLIAM GODDARD, SAM'L S. BACON,
GEO. BRYAN, S. M. HELSTROM,
JAS. H. CLARK, LUCY E. BIRD,
DAVID E. WALKER, HENRY H. SMITH,
THOS. E. FINNEY, SIMON WOODRUFF,
WM. S. CLARK, And J. N. WIGHT,
Defendants.

STATE OF CALIFORNIA,
County of Solano.

We, the undersigned, defendants, being sworn, say, that they verily believe the foregoing plea to be true in substance and in fact; and further depose and say, that the facts stated and set forth in the foregoing plea, are true of their own knowledge, except as in those matters stated therein on their information and belief, and as to those matters that they believe them to be true.

S. M. HELSTROM,
HENRY H. SMITH,
C. N. WIGHT,
SAM'L S. BACON, *Df ts.*

STATE OF CALIFORNIA,
County of Solano.

On this sixth day of November, A. D. 1857, personally appeared before me, a notary public of said county of Solano, J. M. Helstrom, Henry H. Smith, C. N. Wright and Sam'l S. Bacon, and made oath to the truth of the foregoing affidavit by them subscribed.

[SEAL.] Witness my hand and official seal the day and year aforesaid.

WM. S. WELLS,
Notary Public, Solano County.

Endorsed: Filed December 4, 1857.

GEO. PEN JOHNSON, *Clerk,*
Pr. CUTLER McALLISTER *D. C.*

And afterwards, to wit, on the 11th day of January, A. D. 1858, comes the plaintiff and files in court his replication, in the words and figures following, to wit:

Replication.

In the Circuit Court of the United States, Northern District of California.

WILLIAM HART, jr.,
v.
SAMUEL S. BACON et al.

And as a reply to the matter averred in the answer of the defendants in the above action, plaintiffs says, that he denies that he has no real interest in said cause, nor in the premises sued for therein, and denies that he had no such interest therein at the time of bringing this suit, denies that he claims title to the said premises solely under and by virtue of a conveyance made to him for the same by one J. D. Stevenson, who at the time of making the same, was and is yet a resident and citizen of the State of California.

And denies that said Stevenson is the real plaintiff in interest, and that this action is brought for his use and benefit. And denies that the conveyance of the land mentioned in said complaint was made collusively and fraudulently, with the sole intent and purpose of enabling said plaintiff to bring this action in this court for the use and benefit of said Stevenson, instead of bringing the same in one of the courts of the State of California, thereby transferring the jurisdiction of this case from the courts of the State of California to this court. And denies that this hon. court ought not to have or maintain any further cognizance of the aforesaid action.

Dated San Francisco, Jan'y 9, 1858.

WM. HART,
Att'y for Pl'ff.

Due service of a copy admitted, this 9th day of January, 1858.
JOHN WILSON.

Endorsed: Filed January 11th, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 15th day of January, the following order was duly entered, to wit:

Order allowing Plff. to Amend.

At a stated term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco on Friday, the 15th day of January, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Hon. M. Hall McAllister, judge of said court.

WM. HART, jr.,
v.
S. H. CLARK et als.

And now, at this day, on motion of Volney E. Howard, esqr., att'y for pl'ff, it is ordered, that the plaintiff have leave to amend his complaint, and that defendants have five days time from this date in which to answer.

Endorsed: Filed this 15th day of January, A. D. 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

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And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, James H. Clark, and files the following answer, to wit:

Answer of Def't James H. Clark.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss.

In the Circuit Court of the United States, Northern District of California.—20th January, 1858.

WM. HART, jr.,
vs.
JAMES H. CLARK et als.

The defendant, James H. Clark, in the above entitled cause, comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint.

And for further answer as to the southwest quarter, section six, in township two north, range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leages; and that the said supposed Mesa grant ordered and directed, that within the boundaries named in the supposed grant, that the said grantee thereof, under whom the plaintiff *were* granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore his said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid in the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is, part of the public domain of the United States government, and therefore the said land, within the nominal calls of the said supposed grant as before stated, has ever since been and still remains part of the public domain of the United States, and, as such, was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor which part thereof re-

mains public domain, and therefore the said supposed grant remained and still is inchoate, and not final and complete, and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in the said complaint, remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of October, A. D. 1852, the said land then and still being unsurveyed public lands of the United States in the State of California, and this defendant being then and there a citizen of the United States, and the head of a family, then and there settled, in person, upon the said southwest quarter of section six, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part and parcel of the public domain of the United States in the State of California, and there being no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates the same as a pre-emption right under and by virtue of the laws of the United States, and has done and performed all thus far required of him under said laws to secure his right of pre-emption thereto, whereby and by means whereof he was, at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property, and of this he is ready to verify. Wherefore he prays judgment and his costs.

(Signed) JOHN WILSON,
Att'y for Def't.

Endorsed: Filed Jan'y 20, 1858.
GEO. PEN JOHNSTON, *Cl'k*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, William S. Clark, and files the following answer, to wit:

Answer of Dft. Wm. S. Clark.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.
Circuit Court of the United States, Northern Dist. of California.—
20th January, 1858.

WM. HART, jr.,
vs.
JAMES H. CLARK et als.

The defendant, Wm. S. Clark, in the above entitled cause, comes,

and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint.

And for further answer as to the northwest quarter of section seven, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Magenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposod western half thereof contains a large amount of land, viz., more than two square leagues; and that the said supposed Mesa grant ordered and directed, that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United , and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other land contained within the described limits called for as aforesaid within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is, part of the public domain of the United States government, and therefore the said lands within the nominal calls of the said supposed grant as before stated has ever since been and still remains part of the public domain of the United States, and, as such, was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained and still is inchoate, and not final and complete, and therefore the said land so described in the said complaint as being the same described in the said grant, and also the land demanded in said complaint, remained unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of October, A. D. 1852, the said land then and still being unsurveyed public land of the United States in the State of California, and this defendant being then and there a citizen of the United States, and the head of a family, then and there settled upon, in person, the said northwest quarter of section seven, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant,

and part of that which is demanded in plaintiff's complaint, and then and there being part of the public domain of the United States, in the State of California, and there being then no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since, and now occupies, claims, uses, and cultivates the same as a pre-emption right under and by virtue of the laws of the United States, and has done and performed all thus far required of him under said laws to secure his right of pre-emtion thereto, whereby and by means whereof he was, at the time of bringing this suit, and still is, seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property, and this he is ready to verify. Wherefore he prays judgment and his costs.

JOHN WILSON,
Att'y for Def't.

Endorsed: Filed Jan'y 20th, 1858.
GEO. PEN JOHNSTON, *Cl'k*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, Thomas E. Finney, and files the following answer, to wit:

Ans. of Df't Thos. E. Finney.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco

Circuit Court of the United States, Northern District of California.—20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, Thomas E. Finney, in the above entitled cause, comes, and for separate answer to the complaint says, that he denies each and every allegation made in the said complaint.

And for further answer as to the northeast quarter of section eight, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Meganos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues; and that the said supposed Mesa grant ordered and directed, that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square

leagues, a little more or less; and that the said two square leagues so supposed to be granted, never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other land contained within the described limits called for as aforesaid, within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is, part of the public domain of the United States government, and therefore the said land within the nominal calls of the said supposed grant as before stated, has ever since been, and still remains part of the public domain of the United States, and as such, was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained, and still is inchoate, and not final and complete, and therefore the said land so described in the said complaint as being the same described in the said grant, and also the land demanded in the said complaint remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the 1st day of October, A. D. 1852, the said land then and still being unsurveyed public land of the United States, in the State of California, and this defendant being then and there a citizen of the United States, and head of a family, then and there settled in person upon the said northeast quarter of section eight, in township two north, and range one west, the same being within the limits described by the nominal calls of the said snpposed grants, and part of that which is demanded in plaintiff's complaint, and then and there being part and parcel of the public domain of the United States, in the State of California, and there has ever since inhabited and improved the same, and erected a dwelbeing then no existing Indian title to the same, and this defendant ling-house thereon, and has ever since, and now occupies, claims, uses, and cultivates the same as a pre-emption right under and by virtue of the laws of the United States, and has done and performed all thus far required of him under said laws to secure his right of pre-emption thereto, whereby, and by means whereof, he was at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to

hold the same as of his own property, and this he is ready to verify. Wherefore he prays judgment and costs.

JOHN WILSON,
Attorney for Def't.

Endorsed: Filed January 20, 1858.

GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, David E. Walker, and files the following answer, to wit:

Answer of Df't David E. Walker.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Circuit Court of the United States, Northern District of California.—20th January, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, David E. Walker, in the above entitled cause, comes, and for separate answer to the complaint says, that he denies each and every allegation made in the said complaint. And for further answer as to the northeast quarter of section twelve, in township two north, and range two, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint, as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues, and that the said supposed Mesa grant ordered and directed that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues supposed to be granted, never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is part of the public domain of the United States government, and therefore the said lands within the nominal calls of the said sup-

posed grant, as before stated, has ever since been, and still remains part of the public domain of the United States, and as such, is subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof, and that the said supposed grant and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained, and still is inchoate, and not final and complete, and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in the said complaint remains unsegregated from the public domains, and is subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the day of , the said land then and still being unsurveyed public lands of the United States in the State of California, and this defendant being then and there a citizen of the United States, and over twenty-one years of age, then and there settled in person upon the said northeast quarter of section twelve, in township two north, and range two west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part of the public domain of the United States in the State of California, and there being then no existing Indian title to the same; and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since, and now occupies, claims, uses, and cultivates the same as a pre-emption right, under and by virtue of the laws of the United States, and has done and performed all things thus far required of him under said laws to secure his right of pre-emption thereto, whereby, and by means whereof, he was at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property, and this he is ready to verify. Wherefore he prays judgment and his costs, as in duty he will ever pray, &c.

JOHN WILSON,
Att'y for Df't.

Endorsed: Filed January 20, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, Samuel S. Bacon, and files the following answer, to wit:

Answer of Dft. Sam'l S. Bacon.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Circuit Court of the United States Northern District of California.—20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, Samuel S. Bacon, in the above entitled cause, comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint. And for further answer as to the northwest quarter of section eight, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues, and that the said supposed Mesa grant ordered and directed that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted, never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was and now is part of the public domain of the United States government, and therefore the said lands within the nominal calls of the said supposed grant as before stated, has ever since been and still remains part of the public domain of the United States, and as such was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof, and that the said supposed grant and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained and still is inchoate, and not final and complete, and therefore the said land so described in the complaint as being the

same described in the grant, and also the land demanded in the said complaint remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of October, 1852, the said land then and still being unsurveyed public lands of the United States, in the State of California, and this defendant being then and there a citizen of the United States, and the head of a family, then and there settled in person upon the said northwest quarter of section eight, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part and parcel of the public domain of the United States in the State of California, and there being then no existing Indian title to the same; and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates the same as a pre-emption right under and by virtue of the laws of the United States, and has done and performed all things thus far required of him under said laws to secure his right of pre-emption thereto, whereby and by means whereof he was, at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property, and of this he is ready to verify. Wherefore he prays judgment and his costs.

JOHN WILSON,
Attorney for Def't.

Endorsed: Filed Jan'y 20, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Per CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January A. D. 1858, comes the defendant, George Bryan, and files the following answer, to wit:

Answer of Dft. George Bryan.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Circuit Court of the United States, Northern District of California.—20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, George Bryan, in the above entitled cause, comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint. And for further

answer as to the southwest quarter of section five, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Meganos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and that the said supposed western half thereof contains a large amount of land, viz., more than two square leagues, and that the said supposed Mesa grant ordered and directed that within the boundaries named in said supposed grant, the grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted, never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other land contained within the described limits as called for as aforesaid within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was and now is part of the public domain of the United States government, and therefore the said land, within the nominal calls of the said supposed grant as before stated, has ever since been and still remains part of the public domain of the United States, and as such was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof, and that the said supposed grant and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained and still is inchoate and not final and complete, and therefore the said land so described in the said complaint as being the same described in the said grant, and also the land demanded in said complaint remained unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of October, A. D. 1852, the said land then and still being unsurveyed public land of the United States, in the State of California, one Samuel Strode, being then and there a citizen of the United States, and over twenty-one years of age, then and there settled in person upon the said southwest quarter of section five, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part of the public domain of the United States, in the State of California, and there

being then no existing Indian title to the same, and the said Strode has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates the same as a pre-emption right under and by virtue of the laws of the United States, and has done and performed all things thus far required of him under the said laws to secure his right of pre-emption thereto, whereby and by means whereof he was at the time of bringing this suit, and still is seized and possessed of the legal title thereto; and this defendant says, at and before the time of bringing this suit he had, by the consent of the said Strode, entered into the possession of the said quarter section as the tenant of the said Strode, and was then and there in the possession thereof as aforesaid, and therefore this defendant has a right to hold the same as against the said plaintiff, and this he is ready to verify. Wherefore he prays judgment and his costs.

JOHN WILSON,
Att'y for Deft.

Endorsed: Filed January 20, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Per CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, William Goddard, and files the following answer, to wit:

Answer of Df't William Goddard.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Circuit Court of the United States, Northern district of California.—20th Jan'y, 1858.

WM. HART, jr.,
vs.
JAMES H. CLARK et al.

The defendant, William Goddard, in the above entitled cause, comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint. And for further answer as to the southeast quarter of section twelve, in township two north, and range two, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint, as generally known as the New York rancho, or Los Neganos, or the Mesa grant, contains a large amount of lands, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues, and that the said supposed Mesa grant, ordered and directed that within the boundaries named in the said supposed grant, that the said grantees

thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues supposed to be granted, never were segregated from the public dominion under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was and now is part of the public domain of the United States government, and therefore the said land within the nominal calls of the said supposed grant as before stated, has ever since been and still remains part of the public domain of the United States, and as such, is subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof, and that the said supposed grant, and the papers and proceedings which accompanied the same and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof, nor what part thereof remains public domain, and therefore the said grant remained and still is inchoate and not final and complete, and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in the said complaint, remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the day of March, 1855, the said land then and still being unsurveyed public land of the United States, in the State of California, and one James Thompson being then and there a citizen of the United States, and over twenty-one years of age, then and there settled in person upon the said southeast quarter, section twelve, in township two north, and range two, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part of the public domain of the United States, in the State of California, and there being then no existing Indian title to the same; and the said James Thompson has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates the same as a pre emption right, under and by virtue of the laws of the United States, and has done and performed all things thus far required of him under the said laws to secure his right of pre-emption thereof, whereby and by means whereof he, the said Thompson, was at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and this defendant, Goddard,

had previous to the bringing of this suit, entered into and was also in possession of the said quarter section of land by the consent and as the tenant of the said Thompson, and therefore this defendant has a right as the tenant of the said Thompson to hold the same as against the said plaintiff, and this he is ready to verify. Wherefore he prays judgment and his costs, as in duty he will ever pray.

J. & D. C. D. WILSON,
Att'ys for Def't.

Endorsed: Filed January 20, A. D. 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, J. N. Wight, and files the following answer, to wit:

Answer of Dft. J. N. Wight.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.
Circuit Court of the United States, Northern District of California.—
20th Jan'y, 1858.

WM. HART, jr.,
vs.
JAMES H. CLARKE et als.

The defendant, J. N. Wight, in the above entitled cause, comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint. And for further answer as to the northwest quarter of section fourteen, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues, and that the said supposed Mesa grant ordered and directed that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid in the said supposed grant, and which be-

longed to the public domain under both the Mexican and United States governments, and at the bringing of this suit was and now is part of the public domain of the United States government, and therefore the said lands within the nominal calls of the said supposed grant as before stated, has ever since been and still remains part of the public domain of the United States, and as such is subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said supposed grant remained and still is inchoate and not final and complete; and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in the said complaint, remains unsegregated from the public domain, and is subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of March, A. D. 1853, the said land then and still being unsurveyed public lands of the United States in the State of California, this defendant being then and there a citizen of the United States, and the head of a family then and there settled in person upon the said northwest quarter of section fourteen, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part and parcel of the public domain of the United States in the State of California, and there being then no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since, and now occupies, claims, uses, and cultivates the same, as a pre-emption right, under and by virtue of the laws of the United States, and has done and performed all thus far required of him under said laws to secure his right of pre-emption thereto, whereby and by means whereof he was at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property; and this he is ready to verify. Wherefore he prays judgment and his costs.

JOHN WILSON,
Attorney for Def't.

Endorsed: Filed January 20, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, Lucy E. Bird, and files the following answer, to wit:

Answer of Dft. Lucy E. Bird.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.
Circuit Court of the United States, Northern District of California.—
20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, Lucy E. Bird, in the above entitled cause, comes, and for separate answer to the complaint, says, that she denies each and every allegation made in the complaint. And for further answer as to the northwest quarter of section nine, in township two north, and range one west, being part of the land demanded in the complaint, says, that the said supposed tract of land described in the complaint as generally known as the New York ranch, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues, and that the said supposed Mesa grant ordered and directed that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues, so supposed to be granted, never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said supposed two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid in the said supposed grant, which belonged to the public domain under both the Mexican and United States governments, and at the beginning of this suit was and now is part of the public domain of the United States government, and therefore the said land within the nominal calls of the said supposed grant, as before stated, has ever since been, and still remains, part of the public domain of the United States, and as such was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land, so contained within the limits thereof, was granted by the said grant to the grantees thereof, nor what part thereof

remained public domain; and therefore the said supposed grant remained, and still is inchoate and not final and complete, and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in said complaint remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the 1st day of May, 1853, the said land then and still being unsurveyed public lands of the United States, in the State of California, and this defendant, being then and there a citizen of the United States, and the head of a family, then and there settled in person upon the said northwest quarter of section nine, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, a part of that which is demanded in the plaintiff's complaint, and then and there being part and parcel of the public domain of the United States in the State of California, and there being then no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house on the same, and has ever since, and now occupies, claims, uses, and cultivates the same as her pre-emption right under and by virtue of the laws of the United States, and has done and performed all things thus far required of her under the said laws to secure her right of pre-emption thereto, whereby and by means whereof she was at the time of bringing this suit, and still is, seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as her own property, and this she is ready to verify. Wherefore she prays judgment and her costs.

JOHN WILSON,
Attorney for Def't.

Endorsed: Filed January 20, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, Simon Woodruff, and files the following answer, to wit:

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Answer of D'ft Simon Woodruff.

Circuit Court of the United States, Northern District of California.—20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, Simon Woodruff, in the above entitled cause,

comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint. And for further answer as to the southeast quarter of section eleven, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint, as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount, viz., the amount of five square leagues, and the said supposed western half thereof, contains a large amount of land, viz., more than two square leagues; and that the said supposed Mesa grant ordered and directed that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted, never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other land contained within the described limits called for in the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is, part of the public domain of the United States government, and therefore the said land within the nominal calls of the said supposed grant as before stated, has ever since been, and still remains part of the public domain of the United States, and as such was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof, and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained and still is inchoate, and not final and complete; and therefore the said land so described in the said complaint, as being the same described in the said grant, and also the land demanded in the said complaint remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of January, A. D. 1854, the said then, and still being unsurveyed public lands of the United States in the State of California, and this defendant being then and there a citizen of the United States, and over twenty-one years of age, then and there settled in person upon the said southeast quarter of section eleven, in township two north, and range one west, the same being in the limits described by the nominal calls of the said supposed grant,

and part of that which is demanded in plaintiff's complaint, and then and there being part and parcel of the public domain of the United States, in the State of California, and there being then no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates the same as a pre-emption right, under and by virtue of the laws of the United States, and has done and performed all, thus far required of him under said laws to secure his right of pre-emption thereto, whereby and by means whereof he was at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as his own property, and this he is ready to verify. Wherefore he prays judgment and costs.

JOHN WILSON, *Att'y for Def't.*

Endorsed: Filed January 20, 1858.

GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1858, comes the defendant, S. M. Helstrom, and files the following answer, to wit:

Answer of Dft. S. M. Helstrom.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Circuit Court of the United States, Northern District of California.—20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, S. M. Helstrom, in the above entitled cause, comes, and for separate answer to the complaint says, that he denies each and every allegation made in the said complaint.

And for further answer as to the southwest quarter of section twelve, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof contains a large amount of land, viz., more than two square leagues; and that the said supsed Mesa grant ordered and directed, that within the boundaries named in the said supposed grant, that the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues supposed to be granted never were segregated from the public domain under

the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other lands contained within the described limits called for as aforesaid within the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is, part of the public domain of the United States government, and therefore the said land within the nominal calls of the said supposed grant as before stated has ever since been and still remains part of the public domain of the United States, and as such, is subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said grant remained and still is inchoate, and not final and complete, and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in the said complaint remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the first day of February, A. D. 1854, the said land then and still being unsurveyed public land of the United States in the State of California, and this defendant being then and there a citizen of the United States, and over twenty-one years of age, then and there settled in person upon the said southwest quarter of section twelve, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in plaintiff's complaint, and then and there being part and parcel of the public domain of the United States in the State of California, and there being then no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates the same as a pre-emption right under and by virtue of the laws of the United States, and has done and performed all thus far required of him under said laws to secure his right of pre-emption thereto, whereby and by means whereof he was at the time of bringing this suit, and still is, seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property, and of this he is ready to verify. Wherefore he prays judgment and his costs.

JOHN WILSON,
Att'y for Def't.

Endorsed: Filed January 20, 1858.
GEO. PEN JOHNSTON, *Clerk,*
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of January, A. D. 1851, comes the defendant, H. H. Smith, and files the following answer, to wit:

Answer of Dft. H. H. Smith.

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco.

Circuit Court of the United States, Northern District of California.—20th Jan'y, 1858.

WM. HART, jr.,
v.
JAMES H. CLARKE et als.

The defendant, H. H. Smith, in the above entitled cause, comes, and for separate answer to the complaint, says, that he denies each and every allegation made in the said complaint.

And for further answer as to the southeast quarter section six, in township two north, and range one west, being part of the land demanded in the complaint, he says, that the said supposed tract of land described in the complaint as generally known as the New York rancho, or Los Megenos, or the Mesa grant, contains a large amount of land, viz., the amount of five square leagues, and the said supposed western half thereof containing a large amount of land, viz., more than two square leagues; and that the said supposed Mesa grant ordered and directed, that within the boundaries named in the said supposed grant, the said grantees thereof, under whom the plaintiff claims, were granted two square leagues, a little more or less, and that the said two square leagues so supposed to be granted never were segregated from the public domain under the Mexican government, nor has the same ever been segregated from the public domain under the government of the United States, and therefore the said two square leagues, a little more or less, called for in the said supposed grant, never were segregated from the other land contained within the described limits called for as aforesaid in the said supposed grant, and which belonged to the public domain under both the Mexican and United States governments, and at the bringing of this suit was, and now is part of the public domain of the United States government, and therefore the said land within the nominal calls of the said supposed grant as before stated has ever since been and still remains part of the public domain of the United States, and as such was subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and that the said supposed grant, and the papers and proceedings which accompanied the same, and have

taken place at or since the making thereof, do not show what part of said land so contained within the limits thereof was granted by the said grant to the grantees thereof, nor what part thereof remains public domain, and therefore the said supposed grant remained and still is inchoate, and not final and complete, and therefore the said land so described in the complaint as being the same described in the grant, and also the land demanded in the said complaint remains unsegregated from the public domain, and was subject to be located under the pre-emption laws of the United States. And this defendant says, that heretofore, to wit, on the 1st day of October, A. D. 1852, the said land then and still being unsurveyed public land of the United States in the State of California, this defendant being then and there a citizen of the United States, and the head of a family, then and there settled in person upon the said southeast quarter of section six, in township two north, and range one west, the same being within the limits described by the nominal calls of the said supposed grant, and part of that which is demanded in the plaintiff's complaint, then and there being part and parcel of the public domain of the United States in the State of California, and there being then no existing Indian title to the same, and this defendant has ever since inhabited and improved the same, and erected a dwelling-house thereon, and has ever since and now occupies, claims, uses, and cultivates, as a pre-emption right, under and by virtue of the United States, and has done and performed thus far all required of him under said laws to secure his right of pre-emption thereto, whereby and by means whereof he was at the time of bringing this suit, and still is seized and possessed of the legal title thereto, and therefore this defendant has a right to hold the same as of his own property, and this he is ready to verify. Wherefore he prays judgment and his costs.

JOHN WILSON,
Att'y for Dft.

Endorsed: Filed Jan'y 20, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20th day of Feb'y, A. D. 1858, comes the plaintiff, and filed his replication in the words and figures following, to wit:

Replication.

In the Circuit Court of the United States, Northern District of California.

WILLIAM HART, jr.,
v.
JAMES H. CLARK et als. } Replication.

And as a reply to the matters averred in the respective and separate answers of the defendants filed in this action, the plaintiff says, that he denies that the tract of land known as the New York rancho, or Los Meganos, or the Mesa grant, contains the amount of five square leagues, or that the western half thereof contains more than two square leagues, and denies that the grantors of said land were granted two square leagues, a little more or less; on the contrary the plaintiff herein says, that his grantees were granted all the land claimed by the plaintiff in this action, and that the same was defined by natural boundaries, as set forth in said complaint; and denies that the said tract of land was never segregated from the public domain of the Mexican government; and denies that the said tract of land was never segregated from the public domain under the government of the United States; and denies that the said tract of land belonged to the public domain of the United States; either at the time of bringing this suit, or at any time whatever, and denies that the nominal calls of the grant under which this plaintiff claims has ever been since said grant was made, or is now a part of the government domain, either of Mexico or the United States government; and denies that it is subject, under the laws of the United States, to be located in accordance with the pre-emption laws thereof; and denies that the papers referred to in said answers respectively, do not show what part of said land contained within the limits thereof was granted to the grantees thereof; and denies that any part thereof remains public domain, and denies that said grant was and still is inchoate, and not final and complete; and denies that it remains unsegregated from the public domain, and is subject to be located under the pre-emption laws of the United States; and denies that said defendants respectively, or either or any of them, settled upon any portion of said land under the pre-emption laws of the United States, except as trespassers on the lands of the plaintiff; and admits that there was no Indian title to said land; and denies that the said defendants, or either of them, ever inhabited or improved the said land or any portion thereof, or occupies, claims, or cultivates the same as a pre-emption right ununder and by virtue of the laws of the United States; and denies that the said defendants, or any or either of them, have done any and all things required of him or them respectively, to secure his or their right to said land or any part or parcel thereof; and denies that said defendants respectively, or either or any of them, is seized or possessed of the title to said tract of land, or any part or parcel thereof, or has any right whatever to hold the same as his or their own property.

San Francisco, 30th Jan'y, 1858.

WM. HART, *Att'y for Pl'ff.*

Endorsed: Due service of a copy of the within replication is ad-

mitted, and it is hereby stipulated that this replication shall have the same force and effect as if a separate replication to the answer of each def't had been filed, and such separate replication is hereby waived.

30th Jan'y, '58.

JOHN WILSON, *Att'y for Def.*

Filed Feb'y 20, 1858.

GEO. PEN JOHNSTON, *Cl'k*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 1st day of March, A. D. 1858, the following stipulation was filed in said cause:

Stipulation as to Possession of D'fts.

In the Circuit Court of the United States for the districts of California.

WILLIAM HART, jr.,
v.
J. H. CLARK, Simon Woodruff, Wm. Goddard, James H. Clark, Sam'l S. Bacon, George Bryan, David E. Walker, S. M. Helstrom, Lucy E. Bird, Henry H. Smith, Thos. E. Finney and C. N. Wright.

It is hereby stipulated and agreed, by and between the parties to this suit, that the above named defendants hereby severally admit that they were, at the commencement of this suit, as alleged in the complaint and amended complaint filed herein, in the possession of portions of the tract or parcel of land described in said complaints, and are now still in the possession thereof, and that such admission shall be full and ample proof of that fact on the trial of this cause.

San Francisco, 20 Jan'y, 1858.

JOHN WILSON, *Att'y for D'ft.*
WM. HART, *Att'y for Pl'ff.*

Endorsed: Filed March 1st, 1858.

GEO. PEN JOHNSTON, *Cl'k*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 1st day of March, A. D. 1858, the following stipulation was filed herein:

Stipulation as to Amendments.

In United States Circuit Court for the Northern District of California.

WM. HART, jr.,
v.
J. H. CLARKE et als. } Stipulation.

It is stipulated in the above entitled cause that the following amendments be made to the answers as per original agreements:

1st. That the blanks in the answer of David E. Walker, in which the location of his land should be described, be filled so that it will read "the S. E. quarter of section twelve, township two north, and range two west," and in the blanks on 3d page of same, be inserted "about the 1st day of April, 1853."

2d. The blanks in the answer of Goddard, in which the location of his land should be described, be filled so that it will read "N. E. quarter of section twelve, township two north, range two west," and by inserting in blanks on 3d page, (left for date of settlement,) the words "about the 1st day of April, 1853."

WM. HART,
Att'y for Pl'ff.

Endorsed: Filed March 1st, 1858.
GEO. PEN JOHNSTON, *Cl'k*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 1st day of March, A. D. 1858, the following stipulation was filed herein.

Stipulation as to Evidence.

In the Circuit Court of the United States for the districts of California, Northern District.

WILLIAM HART, jr.,
v.
J. H. CLARK et al.

It is hereby mutually stipulated and agreed by and between the attornies in the above cause, that the grant and all other original papers, their copies and translations used before the United States land commission in case No. 616, of Stevenson, Murray, Walsh & Fallon v. The United States, now on file in the office of the United States surveyor general in the city of San Francisco, may be used on the trial of the above cause with the same force and effect as if the execution of the same had been legally proved, subject to all other legal objections.

Dated San Fran'co, 20 of Feb'y, 1858.

JOHN WILSON,
Att'y for Dft.

Endorsed: Filed March 1st, 1858.
GEO. PEN JOHNSTON, *Cl'k*,
Pr. CUTLER McALLISTER, *D. C.*

And afterwards, to wit, on the 20 day of March, the trial of this cause having been proceeded with from day to day, the following proceedings were had therein.

Proceedings in Court.

WM. HART, jr., v. S. H. CLARKE et als. } Common Law.

And now at this day come the parties to this cause, by their respective attornies aforesaid; also come the jury heretefore empaneled, sworn, and charged herein, into court, with a sealed verdict as heretofore agreed upon, and the verdict being opened by the court is read to the jury, and duly recorded as their verdict, as follows: "We find the defendants guilty.

"JAMES HAGAN, *Foreman.*"

San Francisco, March 2d, 1853.

And thereupon the jury were discharged from further attendance.

And afterwards, to wit, on the 2d day of March, A. D. 1858, came the defendants aforesaid, by their attorney, John Wilson, and filed their bill of exceptions in the cause aforesaid, which bill is in words, terms, figures and endorsements as follows, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA,
State of California.

Circuit Court of the United States for the districts of California.

WM. HART, jr., v. SAMUEL H. CLARK et als. }

This cause coming on to be tried, and the jury being sworn, the plaintiff, for the purpose of showing title, and also color of title in himself to land in controversy, read to the jury the following stipulations between the attornies of the plaintiff and defendants, as follows:

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss.

In the Circuit Court of the United States for the Northern District of California.

WM HART, junior, vs. SAM'L BACON et als. }

It is agreed that in the above entitled cause, J. N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Hellstrom, Samuel Bacon, H. H. Smith, James H. Clark, and David E. Walker have been duly

served with process in this case, and that Thomas E. Finney, Wm. S. Clark, Wm. Goddard, and Geo. Bryan, have been imperfectly served. John Wilson, attorney for the above named defendants, agrees to appear for those imperfectly served as well as for those properly served as above stated, and that all these defendants are to be entered by consent in the writ and declarations as the defendants to this suit, and that the time for pleading is extended to the 4th day of December, 1857, on or before which day the said defendants may plead jointly or otherwise, in person or by attorney, any plea or pleas which, under the law and facts, they are or were on first service of the said writ entitled to plead, suffering no prejudice by the extension of the time to those who have been already served, and this agreement is to be filed in the case as evidence thereof.

Dated San Francisco, November 9, 1857.

WM. HART, *Attorney for Pl'ff.*
JOHN WILSON, *Att'y for Dfts.*

Plaintiff also for the same purpose offered to read to the jury the following papers filed in the office of the surveyor general, in the case of J. D. Stevenson and others against the United States, being case numbered 616 on the docket of the board of private land claims:

First. A translated copy of the expediente, with the original diseno or plat, which reads as follows:

Translation.

Senor Prefect of the 1st District.

Jose Antonio Mesa and Jose Miguel Mesa, residents and natives of the pueblo of San Jose Guadalupe and Alvarado, in the most legal manner and due form present ourselves before you saying, that we are possessed of some hundred and fifty head of breeding cows, by means of which our families maintain themselves, and it being necessary to augment this property, we desire to remove it from the community in which it exists, and this is a sufficient motive to compel us to apply to your kind consideration to grant us an unoccupied spot of land on the borders of the river of San Joaquin and the Tulares, known by the name of the Medano, of two sitios, (square leagues,) a little more or less, as it may reach, being bounded on the north by Salvio Pacheco's land, and on the south by Jose Noriega's, for which purpose the respective plat is accompanied.

We, therefore, request that you will decree favorably, excusing the want of sealed paper; this we shall consider as a favor, swearing that which is necessary, &c.

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Pueblo de San Jose Guadalupe and Alvarado, November 22d, 1839.

(Signed) JOSE ANTONIO MESA, ✕
(Signed) JOSE MIGUEL MESA. ✕

No. 2.

Most Excellent Senor Governor.

The parties interested in this memorial ask for a piece of land which is entirely unoccupied, and which is neither owned by any individual, town or mission, since it is situated in the interior in the neighborhood of the Tulares. They enjoy the legal requisites entitling them to be attended to, and this prefecture considers the favor they ask to be just.

San Juan de Castro, November 23d, 1839.

(Signed) JOSE CASTRO.

No. 3.

MONTEREY, 26*th Nov'r*, 1839.

In view of the petition which commence this espediente, the report of the prefect of the 1st district, and all the rest which has been taken into consideration, and duly examined, I, in accordance with the laws and regulations on the subject, do declare the citizens Jose Antonio Mesa, and Jose Miguel Mesa to be proprietary owners of the place called Medanos, bounded on the south by the land of citizen Jose Noriega, on the north by that of citizen Salvio Pacheco, on the east by the river of San Joaquin, and on the west by the hills; let the corresponding title be given to the parties interested, and be recorded in the respective book. I, Senor Don Juan B. Alvarado, constitutional governor of the department of the Californias, have thus commanded, decreed, and signed it, whereof I give testimony.

(Signed) ALVARADO.
(Signed) MANUEL JIMENO, *Sec'y.*

No. 4.

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas citizens Jose Antonio and Jose Miguel Meza have solicited for their personal benefit, and that of their families, the land known by the name of Medano, bounded on the south by the land of citizen Jose Noriega; on the north by that of citizen Salvio Pacheco; on the east by the river of San Joaquin, and on the west by the hills, the necessary steps and investigations having been previously taken, and made in conformity with the laws and regulations, I have, by virtue of the faculties conferred upon me, in the name of the Mexican nation, granted to them the said land,

declaring to them the ownership thereof by these present letters, subject to the approbation of the most excellent departmental junta, and to the following conditions:

1st. They may enclose it without prejudice to the thoroughfare, roads, and priviliges (servidumbres;) they shall enjoy it freely and exclusively, destining it to the use or cultivation which may best suit them, but within one twelve month they shall build a house, and it shall be inhabited.

2d. They shall solicit the respective magistrate to give them judicial possession in virtue of this title, and he shall designate the boundaries, on the limits whereof they shall place, beside the land marks, some fruit trees, or wild ones of some utility.

3d. The land mentioned consists of two sitios, (square leagues,) a little more or less, as appears by the plot which accompanies the espediente.

The magistrate who shall give possession, shall cause it to be measured according to law, letting the overplus remain to the nation for the necessary uses. I consequently command, that holding the present title to be firm and valid, it be recorded in the respective book, and be delivered to the parties interested for their security and other ends.

Given at Monterey, the 26th of November, 1839.

JUAN B. ALVARADO.

MANUEL JIMENO, *Sec'ty.*

A record has been made in the respective book.

[*For plat see original, page* 82.]

No. 6.

MONTEREY, *May 11th*, 1840.

This having been submitted to the most excellent departmental junta, it was determined in to-day's sessions to have it passed to the committee of agriculture.

(Signed) JOSE L. FERNANDEZ, *Sec'ty.*

On the 22d instant, the committee returned it with the accompanying report (or opinion.)

(Signed) FERNANDEZ.

No. 7.

MOST EXCELLENT SIR: The committee of agriculture appointed to report on the espediente of Messrs. Jose Antonio and Jose Miguel Mesa, wherein they solicit the place known by the name of the Medan, on the banks of the river of San Joaquin and the Tulares, bounded by the lands of Messrs. Pacheco and Noriega, having before them the report of the senor prefect, Don Jose Castro, the

land being unoccupied, and a grant thereof having been made to Messrs. Mesa by Governor Don Juan Bautista Alvarado, they see no obstacle in the way, and therefore submit to the deliberation of your excellency the following articles:

Art. 1st. The grant made to Messrs. Mesa, of the land known by the name of the Medano, is approved.

Art. 2d. This espediente shall be forwarded to the superior government of the department for the necessary ends.

Monterey, May 20, 1840.

(Signed) JOSE RAFAEL GONZALES.
(Signed) S. ARGUELLO.

No. 8.

MONTEREY, 22 *May*, 1840.

In to-day's session, the most excellent department junta approved the two articles which close the foregoing report.

(Signed) MANUEL JIMENO, *President.*
(Signed) JOSE L. FERNANDEZ, *Sect'y.*

No. 9.

MONTEREY, 12*th June*, 1840.

In view of the appropriation granted on the 22d of last month, by the most excellent departmental junta, let a certificate thereof be furnished the parties, Don Jose Antonio and Don Jose Miguel Mesa, in confirmation of the land of the Medano, which they obtained on the 26th of November, last year, I, Senor Don Juan B. Alvarado, constitutional governor of the department of the Californias, do thus decree and sign, whereof I give testimony.

(Signed) ALVARADO.

The defendants objected to their being read, denying that they furnished any evidence of title or color of title to the land in controversy, alleging that there was no evidence that the two (2) square leagues, a little more or less, granted to the Mesas had been segregated from the public domain, or from the adjacent private lands either by Mexico or the United States.

The court overruled the objection of the defendants, and allowed the papers to be read, to which ruling the defendants excepted.

For the same purpose, the plaintiff offered to read the following papers, also on file as before stated:

1st. The petition to the board of private land claims for confirmation of the grant.

2d. The decree of the board confirming the same.

3d. The decree of the U. S. district court for the northern district of California, affirming the decree of the board.

4th. The dismissal of the appeal by the attorney general of the United States.

They read as follows:

Petition.

STATE OF CALIFORNIA,
City and County of San Francisco.

To the Hon. H. Hall and H. J. Thornton, Com'rs:

The petition of Jonathan D. Stephenson, Michael Murry, James Welch, and Elba Fallon, respectfully shows, that your petitioners are the lawful owners of a ranch lying in the county of Contra Costa, in said State, commonly called Medanos, bounded on the south by the land of citizen Noriega, on the north by that of citizen Salvio Pacheco, on the east by the river of San Joaquin, and on the west by the hills, which land was granted to Antonio Mesa and Jose Megil Mesa by Juan B. Alvarado, then being governor of Upper California, on the twenty-sixth day of November, one thousand eight hundred and thirty-nine, and by deeds conveyed said grantees to your petitioners, a copy of said grant and deeds, duly certified, are herewith presented, marked A, B, and made a part of this petition.

Your petitioners would respectfully state, that the points of compass, as indicated on the plat accompanying said grant, and as specified in the description of the land thereon described, are some what erroneous, and should be nearly reversed, in order to indicate, by compass, the actual location of the natural points and objects bounding said ranch.

Your petitioners claim title to said land by virtue of the laws, decrees and regulations made in pursuance thereof, from the year 1824 to the date of said grant by the Mexican government, concerning the granting of lands, and by virtue of the conveyances aforesaid to your petitioners from the grantees aforesaid.

Your petitioners aver that their grantors entered into the actual possession and occupancy of said land in the year 1839, and made lasting and valuable improvements thereon, and they, together with your petitioners, holding under them, have continuously occupied the same to this date as the owners thereof.

The prayer of your petitioners is, that the title to said land be confirmed to them, each according to the interest set forth in said conveyances and evidences of right and title in each of your petitioners, and grant to your petitioners all such other and further relief in the premises as may be sanctioned by, &c., and your petitioners, in duty bound, &c.

TINGLEY, HALLADAY & HART,
Attys. for Petitioners.

Filed in office Feb'y 24, 1853.

Recorded in vol. of Petitions, on pages 613, 614.

GEO. FISHER, *Sec'y.*

1065

Decree.

JONATHAN D. STEPHENSON
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is valid, and it is therefore decreed that their application for a confirmation thereof be allowed.

The place of which confirmation is hereby given is called "Medanos," situated in the county of Contra Costa, and embracing two square leagues, a little more or less, having for its exterior boundaries on the one side the lands formerly granted to Salvador Pacheco, and on the other by the river San Joaquin; on another side by the lands of Jose Noriega, and on the other the base of the low hills, to be located according to law, and to be subdivided so as to give to the petitioner, Stephenson, of one-half of the land, embracing the westerly or lower part, and to the balance of the petitioners, jointly, the easterly or upper half, reference being had for greater certainty to the documents and evidence in the case, and the order of the district court of Contra Costa county in the premises.

R. AUG. THOMPSON,
S. B. FARWELL.

Filed in office June 19, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 3, page 83.
GEO. FISHER, *Sec'y.*

Decree.

In the District Court U. S. for the Northern District of California.

J. D. STEVENSON, JAMES WELCH, AND ELLEN FALLON,
v.
THE UNITED STATES.

This cause coming on to be heard at a stated term of this court, on appeal from the final decision of the commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress of March 3d, A. D. 1851, upon the transcript of the proceedings, decision, and the papers and the evidence on which said decision was founded, and the pleadings in this court, counsel for both parties having appeared in this court, it is therefore adjudged and decreed, and this court doth order, adjudge, and decree, that the claim of the appellees, Jonathan D. Stephenson, Michael Murry, James Welch, and Ellen Fallon, is valid; and the same is hereby confirmed and adjudged to be a good and valid

claim to the extent of two leagues, or sitios de ganado mayor, a little more or less, as described in the original grant issued by Governor Juan B. Alvarado on the 26th November, A. D. 1839, to Jose Antonio Mesa and Jose Miguel Mesa, the land known as the "Medanos," bounded as follows: On the one side by the lands formerly granted to Salvio Pacheco, on the other by river San Joaquin, on the other by the lands of Jose Noriega, and on the other by the base of the low hills, lomerias; for a more particular description reference being had to said grant and map attached to the espediente thereof, said grant to be so subdivided as to give to said claimant, Jonathan D. Stephenson, one-half of the land granted, the same being the westerly or lower part, and to the other claimants, Michael Murry, James Welch and Ellen Fallon, jointly, the eastern or upper half, reference being had for greater certainty, to the documents and evidence in the case, and the order of the district court of Contra Costa county, State of California, in the premises.

And it is further ordered, adjudged and decreed, that the decision of said commissioners is in all things affirmed.

OGDEN HOFFMAN, *Dist. Judge.*

Order vacating Appeal.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the second day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
v.
J. D. STEVENSON et als. } D. C. 364. L. C. 616.

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the U. S. attorney, on motion of the district attorney, it is hereby ordered, adjudged and decreed, that the order of this court heretofore entered, granting an appeal on behalf of the United States, be vacated; and that claimants have leave to proceed under the decree of this court heretofore rendered in their favor, as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

To the introduction of each and all of these papers the defendant objected, because no patent has been issued, and they are therefore incompetent for any purpose, and especially that neither or all of these papers furnish any evidence of title in this action, without a patent had first issued.

The court overruled each of the objections of the defendants, and allowed each one of the papers to be read, and the defendants excepted to the ruling of the court.

The plaintiff then, for the same purposes, offered the deeds from the Mesas to J. D. Stephenson, also on file in the surveyor general's office, and within the stipulation in reference to all papers so filed. They read as follows:

Know all men, by these presents, that we, Jose Miguel Garcia, commonly known by the name of Jose Miguel Meza, and Rafaela Miranda, wife of the said Jose, for and in consideration of the sum of twelve thousand dollars to us in hand paid by Jonathan D. Stephenson, of San Francisco, California, at or before the ensealing and delivery of these presents, the receipt whereof we do hereby acknowledge, have given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, and convey unto the said Jonathan D. Stevenson, his heirs and assigns forever, the southern half part of all that certain tract of land situate in Upper California, known by the name of "Medano or Meganos," bounded on the north by the rancho of Salvio Pacheco, on the south by that of Jose Noriega, on the east by the river San Joaquin, and on the west by the Lomerias, said tract of land being the same heretofore granted to the above named Jose Miguel Meza and Jose Antonio Meza, by Juan B. Alvarado, constitutional governor of the department of the Californias, under the government of Mexico, by a grant dated at Monterey, California, on the twenty-sixth day of November, in the year one thousand eight hundred and thirty-nine, and duly recorded in the proper book of record in the prefecture of the first district, together with all the estate, right, title, dower, right of dower, interest and demand whatsoever which we have, or either of us has, of, in, or to the same, or any part or parcel thereof:

To have and to hold the aforesaid premises, with the dwelling-house and corral now standing thereon, and all the privileges and appurtenances thereunto belonging, unto the said Jonathan D. Stevenson, his heirs and assigns, to his and their use and behoof forever; and I, the said Jose Miguel Garcia, for myself, my heirs, executors and administrators, do covenant with the said Jonathan D. Stevenson, his heirs and assigns, that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said Jonathan D. Stevenson, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, we have hereunto set our hands and seals this twenty-seventh day of April, in the year one thousand eight hundred and forty-nine.

JOSE MIGUEL ✕ GARCIA, [L. S.]
RAFAEL ✕ MIRANDA. [L. S.]

Sealed and delivered in presence of—the words "or Meganos" being first interlined—
J. M. LEAVENWORTH,
WALTER SPARROW.

Deed.

Know all men by these presents, that we, Jose Antonio Meza and Dolores Egera, wife of the said Jose, have granted, ratified, released, and confirmed, and by these presents do grant, ratify, release, and confirm unto Jonathan D. Stevenson, his heirs and assigns, all the estate and right of dower which we have, or either of us has, in the southern half part of the tract of land in Upper California, commonly known as the "Medano" or "Meganos," being the same premises heretofore conveyed to the said Jonathan D. Stevenson, by my brother, Jose Miguel Garcia, with the building and corral now standing thereon, and the appurtenances: To have and to hold unto him, the said Jonathan D. Stevenson, his heirs and assigns, forever.

In witness whereof, we have hereunto set our hands and seals this eleventh day of May, in the year of our Lord one thousand eight hundred and forty-nine.

JOSE ANTONIO ✕ MESA, [L. S.]
DOLORES ✕ EGERA. [L. S.]

Sealed and delivered in presence of—
GEORGE W. CANFIELD,
ROBERT T. RIDLEY.

TERRITORY OF CALIFORNIA,
District of San Francisco.

11 *May*, 1849.

Personally appeared before me, the undersigned sub-alcalde, Robert T. Ridley, mission of Dolores, California, Jose Antonio Mesa and Dolores Egera, subscribing the above instrument, and acknowledged the same to be their true act and deed for the purposes therein expressed, the said Dolores Egera, wife of Jose Antonio Mesa, being examined separate, and assenting to a release of dower.

ROBERT T. RIDLEY,
Sub-alcalde.

Filed for record December 15, 1849. Recorded in pages 475 and 476 in book 5, in alcalde's office of the Pueblo de San Jose.
JAMES C. CONREY, *Recorder.*

STATE OF CALIFORNIA,
Contra Costa County.

The foregoing deed was filed for record by J. D. Stevenson, 30th day of May, 1851, at 1 of the clock p. m.
Attest; THOMAS A. BROWN, *Recorder.*

STATE OF CALIFORNIA,
County of Contra Costa, ss.

I, L. C. Wittenmeyer, county clerk and ex-officio county recorder, in and for the aforesaid county, do hereby certify that the foregoing is a true, full, and correct copy of the record of an instrument as now of record in my office, in book "1" of deeds, on pages 346 and 347.

Witness my hand and official seal affixed this 6th day of April, A. D. 1858.

L. C. WITTENMEYER, [L. S.]
County Recorder.

To their introduction the defendants objected, for the reasons hereinbefore assigned for the rejection of all the papers previously introduced.

The court overruled all these objections, and allowed the deeds to be read, to all of which the defendants excepted.

The plaintiff then for the same purpose offered to read to the jury a paper purporting to be a copy of a decree of the third district court of Contra Costa county, and State of California, in a case wherein J. D. Stevenson and others were plaintiffs, and the Mesas and others were defendants, which reads as follows:

JONATHAN D. STEVENSON
v.
JOSE MIGUEL GARCIA, Rafalla Miranda Garcia, Jose Antonio Mesa, Dolores Higuera Mesa, Michael Murry, James Walsh and Ellen Fallon.

And now comes the complainant by J. Franklin Williams, his attorney, and the said defendants by Jones, their attorney, and the demurrer heretofore filed by the defendants being now submitted to the court, and the court being sufficiently advised therein, do now overrule the same, and by agreement of the parties a jury is waived, and this cause is now submitted to the court upon bill, answer, depositions, the testimony taken in a former trial hereof on file, and the agreement of the parties on file, and from which the court find that the said Garcia and wife, and the said Mesa and wife, on the 27th day of April, 1849, were, and for a long time prior thereto had been, owners as tenants in common of a tract of land lying between the river San Joaquin, on the one side, the sand-hills upon the opposite side, and between the ranches of Jose Noriega on the easterly, and the rancho of Salvio Pacheco on the westerly side, known by the name of Medanos or Meginos, in this county, containing two square leagues of land, of which they were then in the actual possession. That on said day, said Garcia and wife, by and for a valuable consideration, sold to said Stevenson all their right to one moiety of said land, the said half

so purchased being the lower or westerly half, and bordering on said river; that by mistake the draftsman of said deeds described said tract of land, so sold as aforesaid, as being the southern half of said tract known by the name of "Medenos or Meganos," bounded on the north by the rancho of Salvio Pacheco, on the south by that of Jose Noriega, on the east by the river San Joaquin, and on the west by the Lomerias.

Whereas said tract of land so sold as aforesaid is the westerly or lower half, and bounded northerly by said river San Joaquin, westerly by the rancho of Salvio Pacheco, and easterly by an imaginary line drawn at right angles with the general course of that part of said river against which said land lies, so as to divide said tract owned as aforesaid by said Mesa and wife, and Garcia and wife, into two equal parts, easterly and westerly, and ought to have been so described in said deeds; that upon said sale the said Mesa and wife, and the said Garcia and wife, then put the said Stevenson in possession of said land so sold as aforesaid, who immediately thereafter improved the same, laid out the town New York of the Pacific, and has continued to occupy the same from thence hitherto; that some time in May, 1850, the said Mesa and wife, and Garcia and wife, for a valuable consideration, bargained and sold to said Murray, Walsh and Fallon all their estate and interest in the other moiety in said tract of land, being the easterly or upper part thereof, and on the 28th day of May, 1850, the said Mesa and wife intending to make a deed to said Murry, Walsh and Fallon, of their interest therein, and on the 12th of June, 1850, the said Garcia and wife intending to make to said Murry, Fallon and Walsh a deed of all their interest therein, the said grantors by mistake described the said last mentioned moiety of said land, in said last mentioned deeds, as being the northerly half of said whole tract.

Whereas said deeds should have described the same as being the easterly or upper half of said rancho, and bounded easterly by the lands of Jose Noriega, and westerly by the imaginary line aforesaid; that at this time, and long before the said sale of said land to said Murry, Fallon and Welsh, thus the said Murry, Fallon and Welsh well knew that the said Stevenson had bought and then owned, and was then in possession of the said westerly moiety or half of said whole tract of land, and that it was the easterly or upper half that was so sold to them; and so the court find that the acceptance of said deeds by them, said Murry, Fallon and Walsh, was fraudulent.

Whereupon the court order, adjudge and decree, that upon the said Stevenson, for himself and his heirs, making and delivering a deed of release, made by himself and others claiming under him, unto said Murry, Fallon and Welsh, of all their right, title and interest, of, in, and to the said easterly or upper half of said

tract of land, that then the said Murray, Fallon and Welsh shall, within thirty days thereafter, execute and deliver to said Stevenson a deed of release of all right, title and interest, which they have by said deeds, of, in, and to the westerly half part of said whole tract of land, bounded as follows, to wit: Northerly by the San Joaquin river, westerly and northwesterly by the rancho of Salvio Pacheco and Suisun bay, and easterly by an imaginary line at right angles with the general course of the river at that place, and southerly therefrom, dividing said whole tract of land into two equal parts, so as to convey to said Stevenson the westerly half thereof, and upon the failure of the said Murry, Fallon and Walsh to make said deed of release within the time aforesaid, that then and in that case, Thomas A. Brown, of said county, be, and he is hereby appointed a commissioner, and empowered as such, to make such conveyance on the part of said Murry, Fallon and Walsh, to said Stevenson, and report his doings to this court.

It is further ordered, adjudged and decreed, that the said complainant recover of the said defendants his costs by him herein laid out and expended. Which said judgment was rendered at the court-house in Martinez, on the 24th day of November, A. D. 1851, by the Hon. Craven P. Hester, district judge of the 3d judicial district, before whom said trial was had, and cause submitted as aforesaid.

To the reading of which defendants objected, because the same was "inter alios acta," and also because the plaintiff did not offer the complaint, summons, answers, and other papers filed therein, whereby this court might determine by inspection, whether the said third district court had jurisdiction of the case made in the complaint, and whether the defendants therein had been duly summoned or appeared.

The court overruled each of these objections, and allowed the paper to be read subject to future objections during the trial. To all of which the defendants excepted, which the court subsequently expressly excluded from the consideration of the jury.

The plaintiff, for the same purposes, proved the execution of, and offered to read to the jury, a deed from J. D. Stevenson to some of the defendants named in the aforesaid decree of the 3d district court, said deed bearing date the 16th day of September, 1851, which reads as follows:

This indenture, made this 16th day of September, 1851, between Jonathan D. Stevenson, of the city and county of San Francisco, and State of California, of the first part, and Michael Murry, James Welch and Ellen Fallon, of the county of Santa Clara, and State aforesaid, party of the second part, witnesseth: that the party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the party of the second part, and divers other good causes hereinafter mentioned and referred to, *has* by these

presents release, remise, and quit-claim to the said party of the second part, their heirs and assigns forever, all the right, title, and interest in law and equity of the said party of the first part, of, in, and to the one equal half of that tract or parcel of land lying in Contra Costa county, and commonly known as the rancho "Medanos," said land hereby released and conveyed by the party of the first part, to the party of the second part, being the easterly or upper half of said rancho, and bounded easterly by the rancho of Jose Noriega, and westerly by an imaginary line drawn at right angles with the general course of the river San Joaquin, or that part of said river against which said land lies, so as to divide said tract of land or rancho aforesaid into two equal parts, easterly and westerly: To have and to hold the land above described to the said party of the second part, and their heirs and assigns forever, free and divested of all the right, title, and interest of the party of the first part, his heirs and assigns, of, in, and to the same, and every part thereof.

This deed of release is made and executed by the party of the first part, to the party of the second part, in conformity to a decree of the district court of the 3d judicial district of said State, for the county of Contra Costa, at the August term, 1851, in a cause then pending and tried in said court, wherein the said party of the first part was plaintiff, and said party of the second part, together with other persons, were defendants, reference being had to the records and proceedings in said suit now on file and of record in the clerk's office of said district court for said county, will more fully appear.

In witness whereof, I have set my hand and seal the day and year first above written.

J. D. STEVENSON. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. HART.

N. B. The foregoing deed is made by the party of the first part, to the party of the second part, in lieu of a former deed made and executed by the party of the first part to the party of the second part, in conformity to the decree referred to in this deed, and delivered to the party of the second part, which deed was by the party of the second part casually lost, or accidentally destroyed, before the same was recorded.

J. D. STEVENSON.

Witness: WM. HART.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this 24th day of February, 1853, personally appeared before me, the subscriber, a notary public in and for the State and county aforesaid, Jonathan D. Stevenson, known to me to be the person described in and who executed the foregoing deed and memoran-

dum, and who acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

WM. HART, [SEAL.]
Notary Public, San Francisco.

To the reading of which the defendants objected, for the same reasons hereinbefore assigned in the objections to the aforesaid decree, and because the same is not duly acknowledged or recorded in Contra Costa county.

The court allowed the same to be read, subject to future objections during the trial. To all of which the defendants excepted.

The plaintiff, for the same purposes, offered to read to the jury a deed on file in the surveyor general's office from one Brown, purporting to be made by him to J. D. Stevenson, under the said decree of said 3d district court, which reads as follows:

This indenture, made this 17th day of February, in the year of our Lord one thousand eight hundred and fifty-two, between Michael Murry, James Welsh, and Ellen Fallon, all of the county of Santa Clara, in the State of California, by Thomas A. Brown, of Martinez, of the county of Contra Costa, in the State aforesaid, by virtue of the authority in him vested, as hereinafter mentioned, of the one part, and Jonathan D. Stevenson, of the city of San Francisco, and State aforesaid, of the other part, witnesseth: Whereas, in the district court of the 3d judicial district, held in and for the county of Contra Costa, and State aforesaid, at the August term, 1851, in a cause therein pending between the said Jonathan D. Stevenson, plaintiff, and Jose Miguel Garcia, Rafella Miranda Garcia, Jose Antonio Meza, Dolores Egaro Meza, Michael Murry, James Welsh, and Ellen Fallon, defendants, by the consideration of the Hon. Craven P. Hester, district judge of said district, it was ordered, adjudged, and decreed, that upon the execution and delivery of the said parties hereto of the first part a good and sufficient deed of release on the part of said plaintiff, and those claiming under him, of all right, title, and interest in and to the upper or easterly half part of the tract of land in the proceedings in the said cause mentioned, situate in the county of Contra Costa, called the Medanos, or Meganos; that they, the said Michael Murry, James Welsh, and Ellen Fallon, should execute and deliver to the said Jonathan D. Stevenson a deed of release of all right, title, and interest which they have of, in, and to the westerly half part of said whole tract of land, bounded as follows, to wit: Northerly by the San Joaquin river; westerly and northwesterly by the rancho of Salvio Pacheco and Suisun bay; and easterly by an imaginary line at right angles with the general course of said river at that place, and southerly therefrom, dividing said whole tract of land

into two equal parts, so as to convey to the said Stevenson the westerly half thereof. And whereas it was further ordered, adjudged, and decreed by the court, that if the said Murray, Fallon, and Welsh should not so make, execute, and deliver a deed as aforesaid to the said Stevenson within thirty days after the making, executing, and delivering of the said deed aforesaid by the said Jonathan D. Stevenson to them as aforesaid, then and in that case the said Thomas A. Brown be a commissioner to carry into effect said decree; and that he, as such, for and on the part of the parties of the first part, make, execute, and deliver to the said Jonathan D. Stevenson the deed as aforesaid; and it appearing that the said Jonathan D. Stevenson, and those claiming under him, did, on the 16th day of September, 1851, execute and deliver to the said Murray, Walsh, and Fallon a deed of release of all his, and the right, title, and interest of those claiming under him, to the easterly, or upper moiety, or half part of the tract of land in the proceedings mentioned, in accordance with the provisions of the decree in the cause, so far as required of him; all of which appears by a receipt from the said Murray, Walsh, and Fallon, by their attorney, George B. Tingley, now on file among the papers in said cause in the said court:

Now, this indenture witnesseth, that in consideration of the premises, and in obedience to said judgment and decree, the said parties hereto of the first part, by the said Thomas A. Brown, commissioner as aforesaid, have remised, released, and forever quit-claimed, and by these presents do remise, release, and quit-claim unto the said party of the second part, his heirs and assigns, forever, all right, title, and interest of, in, and to all the westerly or lower moiety, or half part of the said whole tract of land called the "Medinos," or "Meganos," situate in the county of Contra Costa and State of California as aforesaid, which said moiety, or half part hereby conveyed, is bounded, to wit: northerly by the San Joaquin river; westerly and northwesterly by the rancho of Salvio Pacheco and Suisun bay; and easterly by an imaginary line at right angles with the general course of said river at that place, and southerly therefrom, dividing said whole tract of land into two equal parts, so as to convey to said Stevenson, party of the second part, the westerly half thereof, together with the appurtenances: to have and to hold unto the said Jonathan D. Stevenson, his heirs and assigns, forever.

In witness whereof, the said Thomas A. Brown, commissioner for and in behalf of the said Murray, Walsh, and Fallon, as aforesaid, hath hereunto set his hand and seal, this the day and year first above written.

THOMAS A. BROWN. [SEAL.]

In presence of—
J. FRANKLIN WILLIAMS,
HELMS DOWNING.

STATE OF CALIFORNIA,
Contra Costa County.

On this 23d day of February, A. D. 1852, personally appeared before me, the undersigned, a county judge in and for said county of Contra Costa, Thomas A. Brown, known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same voluntarily for the purposes therein expressed.

Witness my hand the day and year above written.

F. M. WARMCASTLE,
County Judge Contra Costa County.

The foregoing instrument filed for record the 14th day of May, 1852, at 10 o'clock a. m.; recorded immediately.

Filed and recorded at request of J. D. Stevenson.

THOMAS A. BROWN, *Recorder.*

The witnesses J. Franklin Williams and Helms Downing are entered in this record, they having signed the original instrument as witnesses, and the names are copied therefrom with the record, this 9th of August, 1852.

THOMAS A. BROWN, *C. R.*

To the reading of which the defendants objected, for the same reasons assigned for the rejection of the said decree of said 3d district court.

The court overruled the objections, and allowed the same to be read to the jury. To all of which the defendants excepted.

The plaintiff then proved and offered in evidence a deed from the said J. D. Stevenson to Wm. Hart, jr., the plaintiff, which reads as follows:

This indenture, made the tenth day of August, in the year one thousand eight hundred and fifty-seven, between Jonathan D. Stevenson, of the city of San Francisco, State of California, party of the first part, and William Hart, jr., of Manilla, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to all that western half of all that piece, parcel, or tract of land situate, lying, and being in the county of Contra Costa, State of California, and situate at the junction of the San Joaquin river and the bay of Suisun, and bounded on the one

side by the lands of Salvio Pacheco, on the other side by the lands of Jose Noriega, and on another side by the river San Joaquin and bay of Suisun, and on the other side by the "los Lomerios," (the hills,) and generally known as the New York rancho, or "los Megenos," or the Misa grant, being the same as granted by the Mexican government on the 16th day of November, 1839, at the city of Monterey, Upper California, to citizen Jose Antonio Meza and Jose Miguel Misa, containing two leagues of land, more or less, and subsequently confirmed by the United States land commission for the State of California; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part or parcel thereof, with the appurtenances: to have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said party of the first part, for his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said party of the second part, his hers and assigns, that he hath not made, done, committed, executed, or suffered, any act or acts, thing or things, whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged, or incumbered, in any manner or way whatsoever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

J. D. STEVENSON. [SEAL.]

Sealed and delivered in presence of—the word "all," on this page, interlined before the execution hereof—

SAM'L HERMAN.

STATE OF CALIFORNIA,
City and County of San Francisco, ss.

On this tenth day of August, A. D. one thousand eight hundred and fifty-seven, before me, Samuel Herman, a notary public in and for said city and county, duly commissioned and sworn, personally appeared the within named J. D. Stevenson, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the individual described therein, and who executed the said annexed instrument, and he acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand, and affixed my official seal, the day and year in this certificate first above written.

[SEAL.]

SAM'L HERMAN,
Notary Public.

The foregoing instrument was filed and recorded at the request of J. D. Stevenson, August 12th, 1857, at 8 o'clock a. m. The words "and described" interlined in this record.

C. YAGER,
County Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss.

I, L. C. Wittenmeyer, county clerk, and ex officio recorder in and for aforesaid county, do hereby certify the foregoing to be a full, true, and correct copy of a deed of conveyance on record in the recorder's office of Contra Costa county.

Witness my hand and the seal of the recorder of Contra Costa county, affixed this 31st day of Oct'r, A. D. 1857.

[SEAL.]

L. C. WITTENMEYER, *Recorder*,
By THOS. K. MUNK, *Deputy*.

The defendants objected to the reading thereof to the jury for the same reasons hereinbefore assigned in the objections to all the papers given in evidence, and that it did not go to show title, or color of title, taken with the other evidence, to the land sued for and described in the complaint.

The court overruled the objections, and allowed the same to be read to the jury.

To all of which the defendants excepted.

The plaintiff then called J. D. Stevenson, who it was admitted was the same J. D. Stevenson mentioned in the papers given in evidence by the plaintiff, and the grantor of the plaintiff, and offered to swear him as a witness before the jury to testify generally on the issues joined in the cause. The witness stated he had no interest in the event of the suit; that the property had been sold under an execution at the suit of Lucas, Turner & Co., creditors of witness, and who received the usual certificate of sale from the sheriff, which interest of Lucas, Turner & Co. was sold to J. Mora Moss, who received the sheriff's deed for said property under said sale, and subsequently conveyed the whole property to witness, witness executing to him, Moss, a mortgage for the purchase money on the property conveyed, and witness subsequently sold his interest to the plaintiff, and has now no interest in the matter.

Defendants objected to his being sworn in chief, because he was an incompetent witness, being under covenants in the papers exe-

cuted by him, and given in evidence by the plaintiff, and that upon his examination upon his "voir dire" he admitted that he had executed a mortgage upon all his interest in the land sued for in this case to one J. Mora Moss before, but very near the day, if not the same day, that he executed the deed to the plaintiff; and the defendants showed to the court a duly certified copy of the said mortgage, taken from the county recorder's office of Contra Costa county, to show him incompetent, which mortgage reads as follows:

This indenture, made the tenth day of August, in the year one thousand eight hundred and fifty-seven, between Jonathan D. Stevenson, of the city of San Francisco, and State of California, party of the first part, and Joseph Mora Moss, of the same place, of the second part: whereas the said Jonathan D. Stevenson is justly indebted to the said party of the second part in the sum of ten thousand six hundred and thirty-five dollars and eighty-four cents, lawful money of the United States of America, for the purchase money of the premises hereinafter described, and secured to be paid by his two certain promissory notes, bearing even date with these presents, and which said notes are in the words and figures following, to wit:

$1,731 $\frac{82}{100}$. SAN FRANCISCO, *Aug. 10th*, 1857.

For value received, I promise to pay to Joseph Mora Moss, or bearer, in six months from date, the sum of one thousand seven hundred and thirty-one dollars and fifty-two cents, with interest thereon at ten per cent. per annum from the date hereof until paid, at the office of Pioche & Bayerque in the city of San Francisco, without grace.

(Signed) J. D. STEVENSON.

$8,904 $\frac{32}{100}$. SAN FRANCISCO, *Aug. 10th*, 1857.

For value received, I promise to pay to Joseph Mora Moss, or bearer, in six months from date, the sum of eight thousand nine hundred and four $\frac{32}{100}$ dollars, with interest thereon at the rate of three per cent. per month, payable monthly in advance on that day of each and every month corresponding with the date of this obligation. All sums of principal and interest due and to grow due hereon to be paid at the office of Pioche & Bayerque, in the city of San Francisco, without grace; and should the interest hereafter to grow due on this obligation, or any part thereof, be in arrears and unpaid for the space of ten days after the same should have been paid as above prescribed, then it shall be lawful for the said payee, or the holder hereof, to consider the whole amount of the said principal sum, which shall then be unpaid, as immediately due and payable, with interest thereon as aforesaid, although the period above expressed for the payment thereof shall not have arrived,

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and to commence suit for the recovery of the same; and if any part of said interest shall not be paid when the same becomes due, then the holder hereof may add the same to the principal sum, and it shall thereupon become a part of the said principal, and bear monthly interest at the same rate, and so on from month to month, adding all interest in arrears to such principal, and compounding interest on interest at the same rate, and making monthly vests on that day of each month corresponding to the date of this obligation; and in case a cause of action shall accrue on this obligation, then it shall be lawful for the said payee or holder thereof to have and demand upon the same ten per cent. upon the amount then due, or which shall be recovered thereon, as counsel fees in addition to the taxed costs of suit; and in case of judgment or decree said per centage shall be included therein, and bear interest at the same rate, and in the same manner, as the principal debt. This obligation is to be construed as joint and several.

(Signed) J. D. STEVENSON.

As by the said promissory notes, reference being thereunto had, may more fully appear:

Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money secured to be paid by the said promissory notes, with the interest thereon, according to the true intent and meaning thereof, and also, for and in consideration of the sum of one dollar to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part and to his heirs and assigns forever, all the western half of all that piece, parcel or tract of land, situate, lying and being in the county of Contra Costa, and State of California, situated at the junction of the San Joaquin river and the bay of Suisun, and bounded on the one side by the lands of Salvio Pacheco, on the other side by the lands of Jose Noriega, and on another side by the river San Joaquin and the bay of Suisun; and on the other side by the "Las Lomerias" (the hills,) and generally known as the New York rancho, or the "Los Meginos," or the Misa grant, being the same as granted by the Mexican government, on the 26th day of November, one thousand eight hundred and thirty-nine, at the city of Monterey, Upper California, to citizen Jose Antonio Misa, and Jose Miguel Misa, containing two leagues of land, more or less, and subsequently confirmed by the United States land commissioners for the State of California, together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining,

and the reversion and reversions, remainder and remainders, rents, issues and profits, thereof; and, also, all the estate, right, title, and interest, property, possession, claim and demand, whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold all and singular the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever: Provided, always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money secured to be paid by the said promissory notes, and the interest thereon, at the times and place and in the manner mentioned in the promissory notes, according to the true intent and meaning hereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

And the said Jonathan D. Stevenson, for himself, his heirs, executors and administrators, does covenant and agree to pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money and interest as above mentioned, and secured to be paid as aforesaid. And if default shall be made in the payment of the said sum of money above mentioned, or if the interest that may grow due thereon, or any part thereof, shall be behind and unpaid for the space of ten days after the same should have been paid, according to the terms of said promissory notes, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators and assigns, to consider the whole of said principal sum expressed in said notes as immediately due and payable, although the time expressed in said notes for the payment thereof shall not have arrived, and immediately to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, according to law, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory notes, together with the costs and charges of foreclosure suit, and also counsel fees at the rate of ten per cent. upon the amount of judgment rendered, and also the amount of all such payments of taxes, assessments or other incumbrances as may have been made by said party of the second part, his heirs, executors, administrators or assigns, by reason of the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase money (if any there shall be) unto the said Jonathan D. Stevenson, his heirs, executors, administrators or assigns. And the said party of the first part does further covenant and agree to and with the said party of the second part, to pay all ordinary

State and county taxes, and other incumbrances which shall or may be imposed upon the said land and premises, and upon this mortgage, or the moneys hereby secured during its continuance. And in default thereof, the said party of the second part shall have the right and authority to pay and discharge the same; and the sum and sums so paid shall bear interest at the rate of three per cent. per month, payable monthly, and if not paid to be compounded monthly, and shall be considered as secured by these presents, and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof above mentioned, with interest as herein provided.

In witness whereof, the party of the first part to these presents has hereunto set his hand and seal the day and year first above written.

(Signed) J. D. STEVENSON. [SEAL.]

Signed, sealed and delivered in presence of—
SAM'L HERMAN.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this tenth day of August, A. D. one thousand eight hundred and fifty-seven, before me, Samuel Herman, a notary public in and for said county, duly commissioned and sworn, personally appeared Jonathan D. Stevenson, to me personally known to be the individual described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

SAM'L HERMAN, [SEAL.]
Notary Public.

The foregoing instrument was filed and recorded at the request of J. Mora Moss, August 11th, 1857, at 9 o'clock a. m., the *letter* "in" and the word "said" interlined in this record.

C. YAGER,
County Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss.

I, L. C. Wittenmyer, county clerk and ex officio recorder in and for the aforesaid county, do hereby certify that the foregoing is a full, true and correct copy of a mortgage on record in the recorder's office of Contra Costa county.

Witness my hand and the seal of the recorder's office of Contra Costa county, affixed this 31st day of Oct., A. D. 1857.

L. C. WITTENMEYER, [SEAL.]
Recorder.

By THO'S K. MUNK, *Dep'ty.*

The court overruled the objections and allowed the said J. D. Stevenson to testify to the jury in chief, to which the defendants excepted.

The plaintiff then offered the deposition of Hammond taken "de bene esse," subject to legal objections.

Defendants objected because it undertakes to prove possession of land not described in the title to Stevenson.

The deposition objected to reads as follows:

U. S. Circuit Court, Districts of California, Northern District.

WILLIAM HART, jr., vs. S. H. CLARKE et als. } Common Law.

It is hereby stipulated that the annexed deposition may be read in evidence, in the trial of the above entitled cause, with the same effect as if it had been taken on due notice; notice, &c., being hereby expressly waived; a certificate of the commissioner being also waived.

San Francisco, Cal'a, February 10th, 1858.

(Signed) WM. HART, *Pl'ff's Att'y.*

(Signed) JOHN WILSON, *Att'y for Def'ts.*

U. S. Circuit Court, North'n Dist. of Cal'a.

WILLIAM HART, jr., vs. S. H. CLARKE et als. } Common Law.

Present, Wm. Hart, pl'ff's att'y, and John Wilson, def'ts' att'y.

The witness on behalf of the pl'ff, Richard P. Hammond, being duly sworn, deposes and says as follows, to wit: In the month of May, 1849, I was a land surveyor in the State of California, and as such was employed to locate and survey the city of New York of the Pacific; I was employed to do this by Messrs. Jona'n D. Stevenson and Wm. C. Parker; I went up to the land on which this place was to be located on the 5th day of May, 1849, and landed at the south mouth of the San Joaquin river where it empties into the bay of Suisun, at which point the city of New York was afterwards laid out and now stands; I found residing there upon the ranch a Spanish family by the name of Mesa, from whom I had understood that Stevenson & Parker had bought the land on which to locate this city; I had a conversation with old Mesa for the purpose of ascertaining what land had been purchased by Stevenson & Parker before I commenced the survey. Standing upon the ground he pointed out to me the exterior bounds of the ranch, and also a division line between himself and his brother,

(who had been a joint-owner with him of the whole ranch.) According to his description the exterior boundaries were as follows, viz: on the north by the San Joaquin river and the bay of Suisun; on the east by the lands of Marsh; on the south by the crest of the hills dividing the land from Pachecos; and on the west by the same hills running to the bay of Suisun; the particular line of division between the two brothers, pointed out to me by both of them, (both being present,) is a line running from the hills to the San Joaquin river, commencing on the crest of the mountain and running through a very marked cañon and striking the San Joaquin river at a point above the eastern boundary of New York city, I think within one or two hundred yards of the city limits, as I surveyed them, and about a mile or a little more above the mouth of the San Joaquin river; I did not know anything about Stevenson & Parker, and my object in inquiring of the Mesas about the boundaries of the land was to ascertain whether I was on the right land, and to avoid trespassing upon the land of others than those who had employed me to make the survey; I finally made the survey of the city of New York on the Pacific; the Mesas told me they had sold the land on which the city was surveyed to Stevenson & Parker, or to Stevenson; they claimed to be (the Mesas) in possession of the ranch on which the city was surveyed, and of all the ranch within the exterior boundaries heretofore described; they had cattle, sheep, and goats running at large on the ranch; there were several buildings, houses, &c., on the ranch which they occupied; one of the brothers told me that he lived in a house up in the cañon I have mentioned as being on the ranch; he was the brother from whom I understood Stevenson had bought the land; I could see the entire ranch within the boundaries, and no one except the Mesas lived on it; there were no fences on the ranch; there were two or three sheep corrals; I have read the description of the lands mentioned in the complaint in this case, and the land I have described is the same land, or a part of the same.

(The original grant from the surveyor genl's office in case marked "No. 691, James Enright et als., Rancho of Medano—A, original grant," is here shown the witness,) who says as follows, to wit: the boundaries given in this grant are the same as the boundaries of the land I have heretofore described, but the points of the compass in the grant are wrong; to be correct, for north read south, for south read east, for east read north; "ponienta" or west is right; it is a very common thing to find the points of the compass wrong in the Mexican grants in this State; the surveyor corrects them; I know the points of the compass in this grant are wrong just in the way I have stated; I had a compass on the ground; I think I have seen the grant now shown me, or a copy of it, and it, or the copy, is the one under which the Mesas claimed, or owned the land I surveyed in 1849.

(The att'y for the def'ts, John Wilson, esq., objects to all the foregoing deposition, and especially to that portion of it relating to conversations had with the Mesas.)

Cross-examination.

The points of the compass described in the grant shown me would not include the land described in the complaint, nor any other land.

Direct Examination resumed.

Taking the boundaries mentioned in the grant, they being the San Joaquin on one side, the lands of Noriega on another side, the lands of Salvio Pacheco on the third side, and "Las Lomerias" on the west, they would include a specific parcel of land which cannot be mistaken by a surveyor. The river San Joaquin, about its mouth where this land lies, has a general direction east and west, and whilst it furnishes no eastern boundary to any land, furnishes a northern or southern boundary for the adjacent land; the western boundary mentioned in the grant by the points of the compass is correct, and commencing to survey this land at its western boundary, the whole survey would follow naturally by the lands of Pacheco and Noriega to the San Joaquin river, and include the lands described in the complaint.

(Signed) RICH'D P. HAMMOND.

Sworn to and subscribed before me, this 10th day of February, 1858.

GEO. PEN JOHNSTON,
U. S. Commissioner.

The court overruled the objection and admitted the deposition.

To all of which defendants excepted.

The plaintiff then, by the said Stevenson and other witnesses sworn, gave evidence going to prove that in fact the west half was intended to be conveyed by the Mesas to said Stevenson, and that Stevenson's actual possession was at or about the town of New York on the Pacific, which he laid out on the rancho, and was in fact within the west half of said grant.

The plaintiff proved this by witness Stevenson, by W. C. Parker, Billinghurst and others, that he, Stevenson, the grantor of the pl'ff, had been in the uninterrupted possession of all the land mentioned in the complaint from 1849 until ousted by the defendants, and occupied the same by building houses thereon, which were occupied by his servants, agents and tenants, by ranching cattle and other stock thereon, and erecting and using corrals and barns, cutting hay and cultivating at least 800 acres thereof; and that the land mentioned in the complaint was occupied by Stevenson's grantors, who were in the undisturbed possession thereof; that he,

Stevenson, had expended from $30,000 to $50,000 in improvements, building houses, corrals, hog-pens, &c.; and it was proved by the witnesses for both pl'ff and def't, that it was a notorious fact that the land mentioned in the complaint was owned by and in the possession of Stevenson before and at the time the defendants entered thereon.

The defendants objected, but the court overruled the objection and allowed the evidence to be given.

To all of which defendants excepted.

Defendants then offered a duly certified copy of a deed from J. D. Stevenson to Palmer, Gilman and Haight, which deed reads as follows:

This indenture, made the thirty-first day of March, in the year of our Lord one thousand eight hundred and fifty-one, between Jonathan D. Stevenson, of the city of San Francisco, State of California, of the one part, and Charles Gilman and Joseph C. Palmer and Sam'l W. Haight, of the same place, of the other part.

Whereas the said Jonathan D. Stevenson is justly indebted unto several persons in divers sums of money, which at the present time he is unable to pay and satisfy in full; and being desirous that all of his property may be distributed among all his creditors in payment of their respective claims against him, ratably and proportionably, if the property shall be insufficient to pay the whole, and to that end hath proposed and agreed to assign all his property, real, personal, and mixed, unto the said Charles Gilman and Joseph C. Palmer, Sam'l W. Haight, upon trust for the benefit of all his said creditors, in manner hereinafter mentioned:

Now, this indenture witnesseth, that the said Jonathan D. Stevenson, for and in consideration of the premises, and in the further consideration of the sum of five dollars to him in hand paid by the said Charles Gilman and Joseph C. Palmer, Sam'l W. Haight, at and before the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained and sold, aliened and enfeoffed, assigned, transferred, and set over, and by these presents doth give, grant, bargain, and sell, alien, enfeoff, release, convey and confirm, assign, transfer, and set over unto the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, their heirs, executors, administrators and assigns, all and singular the property and estate of him the said Jonathan D. Stevenson, whether real, personal or mixed, wherever the same may be found, and now particularly situated and being in the city and county of San Francisco, and in the counties of Brancefort, Contra Costa, and Sacramento, and all his right, title and interest and estate therein, interest to, and for the uses hereinafter mentioned:

To have and to hold, all and singular, the said lands, tenements and hereditaments, and personal property, unto the said Charles Gilman and Joseph C. Palmer, and Samuel W. Haight, and their heirs, executors, administrators, and assigns, upon trust and confidence that they, or the survivor or survivors of them, and the executors and administrators of such survivors, do and shall, so soon as conveniently may be, make sale, or otherwise dispose, of so much and such part and parts thereof as they and he may deem best, for the best price or prices in money that can be reasonably had or obtained for the same, at public or private sale, as may be sufficient to satisfy and pay all the debts due and owing by the said Jonathan D. Stevenson as aforesaid, whether payable in present or future; and it is hereby declared and agreed, that the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, and their survivors or survivor of them, and the executors and administrators of such survivor, shall and will stand possessed of and interested in the moneys to arise from such sale or sales, or from any mortgage or mortgages, lease or leases, of said property, or any portion thereof received by them or him upon trust, and to the intent that they or he shall, and do, in the first place, pay and retain to, and reimburse themselves or himself, all such costs, charges and expenses as they respectively, or he, shall or may pay, sustain or expend, in or about such sales or sale, lease or leases, so to be made as aforesaid, and do and shall thereout also pay the expense of preparing, executing, and recording these presents, and all other costs, charges and expenses incident to, or which may be incurred or sustained in or about the execution of the trust herein expressed, or any of them, with a reasonable compensation to the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, and the survivors or survivor of them, and the executors or administrators of such survivors, for their and his care, labor, and diligence in and about the same, and then in trust that they, the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, and the survivors or survivor of them, and the executors and administrators of such survivor, do and shall apply the residue of the said trust moneys in and towards payment and satisfaction of the several sums of money due and owing to the several creditors of the said Jonathan D. Stevenson, pari passu, and without any preference or priority of payment; and after the payment or satisfaction of the whole of such debts, and of the costs, charges, and other expenses as aforesaid, then in trust that they, the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, or the survivors or survivor of them, or the executors or administrators of such survivors, do and shall do, and shall reconvey, by a proper deed of conveyance, all the lands and other property hereby conveyed to the said Jonathan D. Stevenson, his heirs and assigns, and pay the surplus of the said trust moneys, if any, unto the said Jonathan D. Steven-

son, his executors, administrators, or assigns, and for the consideration and purposes aforesaid, the said Jonathan D. Stevenson hath made, constituted and appointed, and by these presents doth make, constitute, and appoint the said Charles Gilman, Joseph C. Palmer, and Sam'l W. Haight, and the survivors and survivor of them, and the executors and administrators of such survivor, his true and lawful attorneys and attorney, in the name of the said Jonathan D. Stevenson, or otherwise, at their option, to sell, mortgage, lease, or otherwise dispose of, all and any of the estate, real, personal, or mixed, hereby conveyed, or intended to be, either at public or private sale, for cash, or upon credit, as to them or him may seem most beneficial to the parties interested as aforesaid, and all proper deeds, or other instruments therefor, to make, execute, and deliver to the purchaser, mortgagee, or lessee, upon such sale or other disposition of said property hereby conveyed, and until such sale to collect and receive the rents and profits thereof, and upon receipt thereof or of any part thereof, receipts, acquittances, and other effectual discharges for the same, to make and deliver, and to compound for any bad or dubious debt or debts, and one or more attorney or attorneys, agent or agents, under them or him, for all or any of the purposes aforesaid, from time to time, to appoint, and again, at their and his pleasure, to displace, and further to do and execute all and every other act and acts requisite or expedient to be done in and about the premises, as fully and amply, to all intents and purposes, as he, the said Jonathan D. Stevenson, might or could do or have done in his own person, if these presents had not been made; and the said Jonathan D. Stevenson, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, their heirs, executors, and administrators, by these presents, in manner following, to wit:

That he, the said Jonathan D. Stevenson, his heirs, executors, and administrators, shall and will at all times hereafter justify and allow, ratify and confirm, all and whatsoever the said Charles Gilman and Joseph C. Palmer, Sam'l W. Haight, and the survivors or survivor of them, and the executors and administrators of such survivor shall lawfully do, or cause to be done in and about the premises, and shall not, nor will not, revoke or make void all or any of the powers hereby given, or in pursuance of these presents to be given to the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, or the survivors or survivor of them, or the executors and administrators of such survivor, nor do anything whereby the proper execution of this trust shall be hindered or impeded in any way whatever, nor otherwise act or interfere in and about the premises, further or other than the said Charles Gilman and Joseph C. Palmer, and Sam'l W. Haight, or the survivors or survivor of them, or the executors, administrators, or assigns

of such survivor shall desire or require; and also that they, the said Charles Gilman and Joseph C. Palmer, and Samuel W. Haight, and their respective executors and administrators, shall be charged and chargeable, every of them, for and with his respective receipts, payments, acts, and wilful defaults, and not otherwise, and shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or their hands, nor with or for any loss or charges which shall or may happen in or about the execution of all or any of the trusts aforesaid, without their respective wilful defau!t.

In testimony whereof, the parties have hereunto set their hands and respective seals, the day and year first above written.

J. D. STEVENSON, [SEAL.]
CHARLES GILMAN, [SEAL.]
JOSEPH C. PALMER, [SEAL.]
SAM'L W. HAIGHT. [SEAL.]

Signed, sealed, and delivered in presence of—
JAS. H. BRAD,
RANDOLPH M. COOLEY.

STATE OF CALIFORNIA,
County of San Francisco, ss.

[L. S.]

On this thirty-first day of March, eighteen hundred and fifty-one, before me, the subscriber, a notary public in and for the said county, personally appeared Charles Gilman, Joseph C. Palmer, and Sam'l W. Haight, known to me to be the persons described in, and who executed the above instrument, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof, I have subscribed my name, and have hereunto affixed my seal of office, the day and year last above written.

JAS. H. BAIRD,
Notary Public.

STATE OF CALIFORNIA,
County of Contra Costa.

The foregoing instrument was filed for record 1st day of April, 1851, one of the clock p. m., the words "enfeoffed" and "aliened," interlined on page 291; the words "Bransefort," "interest," "and," "interest," written over and blotted ,page 292; the word "ound," in compound, interlined on page 294, and the word "testimony" interlined in the acknowledgment; recorded the same day.

THOMAS A. BROWN,
Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss.

I, L. C. Wittenmeyer, county clerk, and "ex-officio" county recorder in and for the aforesaid county, do hereby certify that the foregoing is a true, full, and correct copy of the record of an instrument as now of record in my office.

Witness my hand and official seal, affixed this 15th day of February, A. D. 1858.

[SEAL.] L. C. WITTENMEYER,
County Recorder, Contra Costa County.

Plaintiff objected to it as not specifying the property conveyed. Court overruled the objection and allowed it to be read. The deed bears date 31st March, 1851.

Defendants then proved that each of them was an American citizen, over twenty-one years of age, and had settled on their claims, as described in their pleas, before the 1st March, 1856, and had each cultivated portions of their quarter sections named in their pleas, and built a house thereon, and now reside thereon, claiming to hold a pre-emption for the same.

And also proved by the county surveyor of Contra Costa county, that the United States had made no sectional survey of the land in dispute, or of the land in any part of that neighborhood.

This testimony was objected to and ruled out, as showing no title. Defendants excepted.

Plaintiff resumed and offered a deed or paper executed by Sam'l W. Haight (one of the trustees named in the deed of trust from Stevenson to Palmer, Gilman, and Haight, given in evidence by defendants,) to the other two trustees, Palmer and Gilman, which reads as follows:

SAMUEL W. HAIGHT
to
CHARLES GILMAN and
JOSEPH C. PALMER.

This indenture, made this 30th day of September, A. D. 1851, between Samuel W. Haight, of the city of San Francisco, of the first part, and Joseph C. Palmer and Charles Gilman, of the second part, witnesseth: Whereas, by a certain deed of March, A. D. 1857, recorded the same day in the office of the recorder of deeds of the county of San Francisco, Jonathan D. Stevenson conveyed to said Haight, Gilman, and Palmer, certain property therein referred to, for the benefit of said Stevenson's creditors, the party of the first part, in consideration of the sum of one dollar, has released, transferred, and conveyed to said Gilman and Palmer all the property, real and personal, which was conveyed

to said party of the first part by said Stevenson in said deed of assignment, and said party of the first part transfers to said Gilman and Palmer all the rights, powers, and duties vested in said party of the first part, as assignee of said Stevenson.

In witness whereof, said party of the first part has hereunto set his hand and seal, September 30th, 1851.

In open court.

SAMUEL W. HAIGHT. [SEAL.]

In presence of—

STATE OF CALIFORNIA,
County of San Francisco.

On this 30th day of September, A. D. 1851, before me personally appeared Samuel W. Haight, to me well known to be the person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal.

HENRY H. HAIGHT, [SEAL.]
Notary Public.

SAN FRANCISCO CO., *Cal.*

The preceding is a true copy of the original, recorded at request of Palmer, Cook & Co., March 8th, 1852, at 12¼ o'c. p. m.

JOHN A. McGLYNN,
County Recorder.

I, G. W. Beckh, county recorder in and for the city and county of San Francisco, do hereby certify that the foregoing is a full, true, and correct copy of an original record now in my office, as will appear by reference to liber 8 of deeds, page 577.

Witness my hand and official seal this 1st day of June, A. D. 1858.

G. W. BECKH,
County Recorder.

Defendants objected to the reading, as the deed from one trustee to the other passed no interest, and that the trust was a naked power and could not be exercised except by a joint deed of all the trustees; that it destroyed the object of the trust.

It was proved by Stevenson, that at the time and before the execution by Palmer to Stevenson, the latter had paid all the debts and liabilities for which said trust was created.

The court overruled the objection. To all of which defendants excepted. Exception overruled, on the ground that no title had as yet been exhibited by defendants, and they were to be regarded as trespassers, and not entitled to show an outstanding title, unless they connected themselves with it.

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Plaintiff then offered a paper executed by Gilman, (another of the trustees in Stevenson's trust deed, before given in evidence by defendants,) which reads as follows:

CHARLES GILMAN
TO
JOSEPH C. PALMER.

This indenture, made this 17th day of April, 1852, between Charles Gilman, of the city of San Francisco, in the State of California, of the first part, and Joseph C. Palmer, of the same place, of the other part.

Whereas by a certain deed of assignment, bearing date thirty-first day of March, 1851, Jonathan D. Stevenson conveyed to the said Gilman and Palmer and to one Samuel W. Haight, his property for the said Stevenson's creditors: Now, this indenture witnesseth, that in consideration of the sum of one dollar by the said Palmer to the said Gilman in hand paid, at and before the time of the execution of these presents, the receipt whereof is hereby acknowledged, the said Gilman hath transferred and conveyed to the said Palmer all the property, real and personal, not heretofore sold and transferred, which was conveyed to him, the said Gilman, by said Stevenson in his said deed, and by a further conveyance made by the said Haight, on the thirtieth September, 1851, by his deed of that date, recorded in the office of the county recorder, March 8th, 1852, in liber S of deeds, page 516, reference thereto being had; and said Gilman doth hereby transfer to the said Palmer all the rights, powers, and duties vested in him as assignee as aforesaid of said Stevenson.

In witness whereof the said Charles Gilman doth hereto set his hand and seal, this 17th day of April, 1852.

CHARLES GILMAN. [SEAL.]

Signed, sealed, and delivered in presence of—
A. G. RANDALL.

STATE OF CALIFORNIA,
County of San Francisco.

On this 17th day of April, A. D. 1852, personally appeared before me, a notary public, duly commissioned and sworn, in and for the above named county, Charles Gilman, to me known to be the person described in and who executed the foregoing instrument, and who acknowledged that he executed the same, freely and voluntarily, for the uses and purposes therein mentioned.

Witness my hand and seal of office, the day and year first above written.

A. G. RANDALL, [SEAL.]
Notary Public.

The preceding is a true copy of the original, recorded at request J. D. Stevenson, April 19th, 1852, at 11½ o'c., a. m.

THOS. B. RUSSEAU,
County Recorder.
Per JOHN A. CLARK,
Deputy.

I, G. W. Beckh, county recorder in and for the city and county of San Francisco, do hereby certify that the foregoing is a full, true, and correct copy of an original record now in my office, as will appear by reference to liber 1 deeds of trust, page 335.

Witness my hand and official seal, this 1st day of June, 1852.

G. W. BECKH, [SEAL.]
County Recorder.

Defendants objected to this being read, for the same reasons assigned against the deed from Haight.

The court overruled the objections and allowed the deed to be read. To all of which defendants excepted.

Plaintiff then offered a deed or paper executed by J. C. Palmer, (the third trustee,) which deed reads as follows:

JOSEPH C. PALMER
TO
JONATHAN D. STEVENSON.

This indenture, made this 13th day of January, 1853, between Joseph C. Palmer, of the city of San Francisco, in the State of California, of the first part, and Jonathan D. Stevenson, of the said city of San Francisco, of the second part, witnesseth: Whereas, by a certain deed of assignment, bearing date the 31st day of March, 1851, the said Jonathan D. Stevenson conveyed to the said Joseph C. Palmer, to one Charles Gilman, and to one Samuel W. Haight, all the said Stevenson's property, real, personal or mixed, in trust, to pay the said Stevenson's creditors; and whereas the said Haight, on the 30th day of September, 1851, by his deed of that date, and recorded in the office of the county recorder of San Francisco, March 8th, 1852, in liber 8 of deeds, page 516, reference thereto being had, conveyed and transferred to the said Gilman and the said Palmer all the property, real and personal, not then previously sold and transferred, and which was conveyed by said Stevenson in his said deed, together with all the rights, powers and duties vested in him, the said Haight, as assignee of said Stevenson; and further, whereas the said Gilman, on the 17th day of April, 1852, by his deed of that date, and recorded in the office of the county recorder of San Francisco, April 19, 1852, in liber one (1) of deeds of trust, page 335, reference thereto being had, the said Gilman transferred and conveyed to the said Palmer all the property of the said Stevenson, real and personal, not then previously sold, and

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which was conveyed to him, the said Gilman, by the said Stevenson, in his deed, and all the rights, powers, and duties vested in him, the said Gilman, as assignee of said Stevenson:

Now this indenture witnesseth, that for and in consideration of the sum of one (1) dollar by the said Stevenson to the said Palmer in hand paid at and before the time of the execution of these presents, the receipt whereof is hereby acknowledged, the said Palmer hath transferred, and by these presents doth transfer and convey unto the said Jonathan D. Stevenson, his heirs and assigns, forever, all the property, real, personal, and mixed property, and not heretofore sold and transferred, and which was conveyed to said Palmer by said Stevenson in his said deed, wherever the same may be found, particularly in the city and county of San Francisco, and in the counties of Brancefort, Contra Costa, and Sacramento.

In witness whereof the party of the first part hath hereunto set his hand and seal the day and year first above mentioned.

JOSEPH C. PALMER. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. HART, *Notary Public.*

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this 13th day of January, A. D. 1853, personally appeared before me, a notary public duly commissioned and sworn in and for the above named county, Joseph C. Palmer, to me known to be the same person described in and who executed the foregoing instrument, and who acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and seal of office the day and year first above written.

[SEAL.] WM. HART, *Notary Public.*

San Francisco Co.

The preceding is a true copy of the original recorded at the request of J. D. Stevenson, January 22, 1853, 3¼ o'clock p. m.

THOMAS B. RUSSUM,
County Recorder.
Pr. JOHN A. CLARK, *Deputy.*

I, G. W. Beckh, county recorder in and for the city and county of San Francisco, do hereby certify that the foregoing is a true and correct copy of an original record now in my office, as will appear by reference to lib. 20 of Deeds, page 4.

Witness my hand and official seal this 1st day of June, A. D. 1858.

[SEAL.] G. W. BECKH,
County Recorder.

Defendants objected, assigning the same reasons therefor as were previously assigned against the deeds of Haight and Gilman.

The court overruled these objections and allowed all these to be read. To all of which defendants excepted.

This was all the evidence given by either plaintiff or defendants.

The plaintiff asked the court to give the following instructions:

HART
vs.
CLARK et als.

Instructions asked by the Pl'ff's Counsel.

First. If you are satisfied from the testimony, that the pl'ff's grantor actually occupied, possessed, and cultivated the western half of the property described in the complaint before the defendants entered upon the same, you must find for the pl'ff.

Second. If the pl'ff's grantor, and those under whom he claimed, were in possession as testified by witnesses Parker, Hammond, and Stevenson, and others, and you are satisfied with the truth of their testimony, and the defendants entered after such occupation, &c., the pl'ff is entitled to recover.

Third. The proof of the title on the part of the pl'ff, if possession of the premises sued for be proved, is sufficient to enable him to recover unless the defendants have shown title in themselves.

Fourth. The grantees from the Mexican nation are entitled to all the land included within the exterior boundaries mentioned in the grant, and embraced within the accompanying map or plat. (Disallowed.)

Endorsed: Filed March 2d, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

The defendants then asked the court to give the following twenty-five instructions:

WM. HART, jr.,
v.
JAMES H. CLARK et als.

The defendants move the court to instruct the jury as follows:

First. That the petition of the Mesas for the grant, and the grant itself, given in evidence by the plaintiff, are no sufficient evidence of title to support this action unsupported by other evidence.

Second. The said petition and grant are withdrawn from the consideration of the jury. (Disallowed.)

Third. The decree of confirmation by the board of private land claims and dist. court, and dismissal of the appeal by the Att'y

Gen'l, given in evidence by the pl'ff, without a survey by the United States surveyor general for California of the land confirmed segregating the same from the public domain and adjacent ranches gives no title sufficient to support this action on the part of the plaintiff.

Fourth. That the jury are not to consider the paper purporting to be a decree of the 3d district court, as given in evidence by the plaintiff, as in evidence before them, as the same is hereby withdrawn.

Fifth. That the said decree mentioned in the last instruction is not in evidence, and must not be regarded by the jury, as the pl'ff failed to produce also with it the complaint, answers, exhibits and other pleadings in said cause.

Sixth. That if the jury find that J. D. Stevenson, who made the deed to the plaintiff, given in evidence by the pl'ff, is the same person who executed the deed to Palmer, Gilman and Haight, and if they further find that it was subsequent to the date of the last deed that the defendants entered, then they cannot find that the defendants entered upon the lands of the plaintiff.

Seventh. That the deed from the said Stevenson to Palmer, Gilman and Haight, conveyed all his interest in the Mesa ranch now in controversy in this suit, and unless he has acquired from some other source, since then, a new interest in the said ranch, his deed to the pl'ff passed no interest to him.

Eighth. That there is no evidence before the jury to show that the said Stevenson had acquired any other interest in said ranch after the date of the said deed to Palmer, Gilman and Haight.

Ninth. That they must disregard the evidence of J. D. Stevenson, who is the grantor of the plaintiff, and one of the grantees of the Mesas, and the grantor in the mortgage to J. Mora Moss, given in evidence by the defendants, being thereby an incompetent witness.

Tenth. That if the jury find that there is contained within the calls of the supposed grant, given in evidence by the plaintiff, granting to the Mesas two square leagues, a little more or less, five or six or more square leagues, and that the said two square leagues, a little more or less, named therein as granted to the Mesas, were never measured, set off, or segregated from the public domain and the neighboring ranches by any judicial possession, so as to segregate the same from the other lands contained within the calls of the grant by the government of Mexico, or any of its authorized officers, and that the same has not been surveyed by the surveyor general of the United States for California so as to segregate the same from the public domain, then the title papers given in evidence do not furnish a title sufficient for the plaintiff to recover on.

Eleventh. That there is no evidence given in this cause which shows that the said two square leagues, a little more or less, sup-

posed to be granted to the Mesas, have been segregated from the public domain or other adjacent lands, either by the Mexican or United States governments.

Twelfth. That if the jury find from the evidence before them, that the facts stated in the special answer of each of the defendants are true, and that they are settled upon, and within the calls of the grant to the Mesas, claiming their pre-emption rights to the land they reside on, then they are to find for the defendants the land claimed in their said special answers.

Thirteenth. That the defendants had a right after the third of March, 1853, and before the first day of March, 1856, if they found unoccupied and unenclosed land, to settle on this Mesa ranch, and hold a pre-emption of the lands they have improved, cultivated and built a house on, if the ranch contained within its calls over and above two square leagues, a little more or less, if the same had not been segregated from the public domain prior to their settlement, either by the Mexican or United States governments.

Fourteenth. That the defendants, if they entered within the times and under the circumstances as stated in the last instruction, (the 13th,) are not trespassers.

Fifteenth. That the fee simple title to the land sued for, from all the evidence before the jury, remains in the United States.

Sixteenth. That the plaintiff cannot maintain this suit upon his title papers given in evidence, unless they show a legal title to the land on which the defendants are settled.

Seventeenth. That the plaintiff in this action cannot recover upon the weakness of the defendants' title, but upon the strength of his own.

Eighteenth. That if the jury find that the plaintiff declares in his complaint that he had possession of the land sued for before the date of Stevenson's deed to him, which was given in evidence by the plaintiff, then they find for the defendants.

Nineteenth. That taking possession of a piece of land without any title-papers purporting to convey it to him, the land he had had previous possession of gives him no title or right to hold any more than he actually used, cultivated, or enclosed.

Twentieth. That the grant to the Mesas, and their deeds to J. D. Stevenson, do not give him or his grantee any color of title, so as to enable him to recover any land not actually in his possession.

Twenty-first. That upon the face of the grant to the Mesas, and the deeds from them to J. D. Stevenson, and from him to the plaintiff, and the confirmation, only attempt to convey to the latter one square league, a little more or less.

Twenty-second. That if the plaintiff had applied to the surveyor general of California to survey off to him the land confirmed to J. D. Stevenson, the plaintiff's grantor, under the confirmation

given in evidence, by the laws of the United States he was only entitled to one square league, a little more or less.

Twenty-third. That if the jury believe from the evidence that the tract sued for by the plaintiff includes, as it is described in the complaint, more than two square leagues, then whatever is over one square league, a little more or less, under the confirmation, shown by the plaintiff himself, is public land; and after the survey is made by the surveyor general of California, whatever land is left out of said survey is public land, and is subject to pre-emption by any settlers thereon who may have settled and made the improvements required by the pre-emption laws.

Twenty-fourth. If the jury find from the evidence that Stevenson, the grantor of the plaintiff, entered into possession of the premises under the grant to the Mesas, and their deeds to him, then the plaintiff is only entitled to recover one square league, a little more or less; and if they further find from the evidence given in the cause that that square league, a little more or less, had never been set off and segregated from the public domain, or other lands adjoining to it, then the jury may take the possession and cultivation of the said Stevenson, and his declarations made by him at and about the time of his taking possession, as evidence that he intended his land to be laid off where his settlement and improvements were made as evidence of his selection of the land so occupied and cultivated as that which he claimed, and then the jury will take all the evidence before them, and if they find that in laying off in the usual form of making surveys a square league, a little more or less, would not include the defendants, then they will find for the defendants not so included.

Endorsed: Filed March 2d, 1858.

GEO. PEN JOHNSTON, *Cl'k.*
Per CUTLER McALLISTER, *D. C.*

The court then instructed the jury as follows:

WM. HART, jr., }
v. }
S. H. CLARK et als. }

I instruct you:

First. That under the decisions of the supreme court of this State, which is the law to control you in this case, a prior and peaceable possession of land, if satisfactorily established, is sufficient evidence of the right of possession to enable a plaintiff to recover in ejectment against one who enters upon that possession without title, and is to be considered a mere trespasser.

Second. That if possession be accompanied by color of title, which means defective, as distinguished from perfect title, the party in such possession has sufficient evidence of title to recover against

one who is in possession without color of title, and whose possession is tortious.

Third. If the plaintiff has proved possession within certain limits, although they have alleged a fee-simple title, they are not compelled to prove the same; they can properly rely on their prior possession.

Fourth. Where a party in peaceable possession of land is entered upon by one not having title to, or authority to enter upon the land, the party ousted may recover the premises in ejectment upon his possession merely, and his right to recover cannot be resisted by showing that there is or may be an outstanding title in another, but only by showing that defendant himself either has title or authority to enter under that title.

Fifth. The general rule is, that the plaintiff must recover on the strength of his own title, and not upon the weakness of the defendant; but this rule is not of universal application, and must be limited and qualified by the cases in which it arises. The rule does not extend to trespassers.

Sixth. If the boundaries of the land sued for have been established to your satisfaction, and it has been proved that the plaintiff, and those under whom he claims, has been in the actual and peaceable possession of the land for a series of years (two in one case and one in another have been deemed sufficient) up to those boundaries, the proofs of such facts will entitle plaintiff to recover upon such possession up to those boundaries.

Seventh. The questions of possession and identity of the land are questions for your exclusive consideration. As to what constitutes possession, I instruct you that an enclosure or fence, and cultivation of every portion of the land, are not the only evidences of actual possession. In a country where land is owned in small parcels, and usually enclosed, such enclosure affords unmistakable evidence of appropriation and occupancy. When, therefore, a right is claimed to have been acquired by an adverse possession without color of title, the party claiming is restricted to the land, the exclusive right to which he has asserted notoriously by enclosing or cultivating it; but the enclosure or cultivation of them does confer no title. They only afford evidence of the intention to assert a right to the land included within the limits claimed. The same evidence is afforded by an entry upon a part of a tract of land under color of title to the whole; for in such case a party is deemed to be in possession of the whole if he claims it. But other acts equally significant of the parties' intention (being the strongest that circumstances admit of) *which* may have the same effect. Where, by the customs of the country, acts of ownership have been exercised, and the land within the limits recognised as claimed by those acts; where the party used and possessed the land by grazing of cattle, the erection of corrals, cutting of hay, cultivating por-

tions of the land in a way in which only an owner could use it. Where the limits of the land to which he asserts his rights are notorious, and have been recognised for a series of years, and undisputed, such facts furnish evidence of possession almost as satisfactory as if, according to the customs of a well settled and old country, there had been an enclosure and cultivation of the whole.

Eighth. The grant given in evidence in this case did not itself transfer a title to any land exceeding the quantity of land mentioned in one of the conditions of the grant, and as against the United States cannot be held to have conveyed any greater quantity; but if you find that the grantees went into peaceable possession of a greater quantity, and held actual possession of same, in which possession the plaintiff and those under whom he claims succeeded and retained until the entry of defendants, I instruct you, that if it be conceded that a superior title to a portion of the land remains in the United States, such fact cannot be set up by the present defendants, they having entered on the prior possession of pl'ff, (if you shall find the fact to be so,) without title.

Ninth. That defendants have exhibited no title. Their attempt to set up a title on the ground that the land sued for is public land, to which they by virtue of their possession, have a pre-emption right, constitutes no title whatsoever. Their entry upon the land was in violation of two acts of Congress; the one passed 3d March, 1807, entitled "An act to prevent settlements being made on lands ceded to the United States until authorized by law." The other act was passed on 3d March, 1853, entitled "An act to provide for the survey of public lands in California, the granting of pre-emption rights, and for other purposes." They are therefore without title, and are to be considered as trespassers.

Tenth. That several defendants may be joined in one suit in ejectment, when plaintiff's title in relation to all is the same, although their possession be several and not joint; each defendant may be found guilty for the part of the premises found in his possession.

Endorsed: Filed March 2d, 1858.
GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

To the giving of all and each of which, defendants excepted.

The court then gave the first three instructions asked by the plaintiff to the jury; to the giving of all and each of which defendants excepted.

The court then added the following words to the first instruction asked by the defendants, "unsupported by other evidence," and then gave the same to the jury; to the adding of which words, defendants excepted.

The court then gave the 1st as amended, the 4, 5, 12, 16, 17, 20, 21, and 22d, and 23d of the instructions, asked by defendants,

and refused to give the 2, 3, 6, 7, 9, 10, 11, 13, 14, 15, 18, 19, 24 and 25th instructions.

To the refusal to give each and every one of the instructions asked by defendants, the defendants excepted.

The said defendants prayed that each and all their said exceptions, stated and set forth in this bill of exceptions, may be signed, sealed, and made a part of the record in this cause, which is done accordingly.

Allowed.

(Signed) M. HALL McALLISTER, [SEAL.]
Judge, &c.

San Francisco, March 2d, 1858.

Endorsed: Filed March 2d, 1858.

GEO. PEN JOHNSTON, *Clerk*,
Pr. CUTLER McALLISTER, *D. C.*

Judgment.

And afterwards, to wit, on the 2d day of March, A. D. 1858, judgment was entered in said cause in words, terms, figures, as follows, to wit:

UNITED STATES OF AMERICA,
State of California.

In the Circuit Court of the United States for the districts of California, in and for the northern district thereof.

WILLIAM HART, jr., Plaintiff,
v.
JAMES H. CLARKE et als., Defendants. } Common Law.—Judgment on verdict.

This cause came on regularly for trial. The said parties appeared by their attorneys; a jury of twelve persons was regularly empanelled and sworn to try said cause, on the 23d day of February, A. D. 1858. Thereafter, namely, on the 26th day of February, A. D. 1858, by consent of the respective attorneys, entered upon the minutes of the court, one of said jurors was excused from further attendance, and the trial of the cause was proceeded with before eleven jurors. Witnesses on the part of the plaintiff and defendants were sworn and examined. After hearing evidence, the arguments of counsel and instructions of the court, the jury retired to consider their verdict, and the verdict of the jury having been duly rendered and entered, to wit, on the 2d day of March, 1858, whereby the said jury find the defendants guilty, and the value of the land sued for $2,000.

Now, therefore, upon the motion of the attorney for the plaintiff, and by virtue of the premises and verdict resaid, it is

hereby ordered, adjudged, and decreed, that William Hart, junior, the plaintiff herein, do have and recover of and from Samuel S. Bacon, J. N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Helstrom, H. H. Smith, James H. Clarke, David E. Walker, Thomas E. Finney, William S. Clarke, William Goddard, and George Bryan, the defendants, the possession of the premises mentioned and described in his complaint, viz: to all that western half of the piece or parcel of land situate, lying, and being in Contra Costa county, State of California, on the bay of Suisun, bounded as follows, to wit: on the one side by the lands of Salvio Pacheco, on the other side by the river San Joaquin and bay of Suisun, and on the other side by the Los Lomerias, (the hills,) and generally known as the New York rancho, or the Mesa grant, together with the appurtenances.

It is further ordered, adjudged, and decreed, that the said plaintiff is the owner in fee of the said premises, and that the defendants are in the wrongful possession of the several portions of the said premises mentioned and described in their several and respective pleas, and that the plaintiff have his writ of restitution, and that the same be issued in due form of law to put him into and restore him to the possession of said premises in this cause.

And it is further ordered, adjudged, and decreed, that the value of said premises is the sum of $2,000.

And it is further ordered, adjudged, and decreed, that the said William Hart, Junior, plaintiff, do have and recover of said defendants his costs and disbursements in this action incurred and expended, to be taxed by the court, and that due process issue for the collection of the same.

San Francisco, Cal'a, March 2d, 1858.

GEO. PEN JOHNSTON,
Clerk of the Cir. Ct. of the U. S., Dist's of Cal'a.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the districts of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between William Hart, jr., plaintiff, and Samuel S. Bacon, J. N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Helstrom, H. H. Smith, James H. Clarke, David E. Walker, Thomas E. Finney, William S. Clarke, William Goddard, and George Bryan, defendants, manifest errors have happened, to the great damage of the said defendants, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and

speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the capitol, in the city of Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 8th day of October, A. D. 1858, and of our independence the 83d.

Attest: GEO. PEN JOHNSTON, *Clerk.*
Per CUTLER McALLISTER, *D. C.*

[SEAL.]

I allow the within writ of error.

M. HALL McALLISTER, *Judge.*

Citation of Error.

UNITED STATES OF AMERICA, *ss.*

To William Hart, jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of California, in and for the northern district, wherein Samuel S. Bacon, J. N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Helstrom, H. H. Smith, James H. Clarke, David E. Walker, Thomas E. Finney, William S. Clarke, William Goddard, and George Bryan, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Hon. M. H. McAllister, judge of the circuit court of the United States for the districts of California, this 8th day of October, A. D. 1858.

[SEAL.] M. HALL McALLISTER,
Judge Cir. Court U. S. Dist's of California.

Attest: GEO. PEN JOHNSTON, *Cl'k.*
Pr. CUTLER McALLISTER, *D. C.*

We hereby acknowledge due service of the within citation in error this 9th day Oct., 1858.

WM. HART,
Attorney for Plaintiff.

In the Circuit Court of the United States for the districts of California—Northern District.

I, Geo. Pen Johnston, clerk of the circuit court of the United States for the districts of California, do hereby certify, that the foregoing 188 pages contain a full, correct, and faithful transcript of the record of the proceedings had in the above entitled cause.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at the court-house, in the city of San Francisco, this 29th day of October, A. D. 1858.

[SEAL.]

Attest: GEO. PEN JOHNSTON, *Clerk.*
Pr. CUTLER McALLISTER, *D. C.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the districts of California, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the circuit court before you, between William Hart, jr., plaintiff, and Samuel S. Bacon, J. N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Helstrom, H. H. Smith, James H. Clarke, David E. Walker, Thomas E. Finney, William S. Clarke, William Goddard, and George Bryan, defendants, manifest errors have happened, to the great damage of the said defendants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the Capitol, in the city of Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 22d day of August, A. D. 1859, and of our independence the 84th.

[SEAL.]

Attest: GEO. PEN JOHNSTON,
Clerk Cir. Court U. S. Dist's of Cal'a.
By CUTLER McALLISTER, *D. C.*

I allow the within writ of error.

M. HALL McALLISTER, *Judge, &c.*

Citation to Def't in Error.

UNITED STATES OF AMERICA, *ss.*

To William Hart, Jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of California, in and for the northern district, wherein Samuel S. Bacon, J N. Wight, Mrs. L. E. Bird, Simon Woodruff, S. M. Helstrom, H. H. Smith, James H. Clark, David E. Walker, Thomas E. Finney, William S. Clarke, William Goddard and George Bryan, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. M. Hall McAllister, judge of the circuit court of the United States for the districts of California, this 29 day of August, A. D. 1859, and of the independence of the United States the 84th.

[SEAL.]

M. HALL McALLISTER,
Judge Cir. Court U. S. Dist's Cal'a.

Attest:

GEO. PEN JOHNSTON,
Clerk of Cir. C't U. S. Dist's of Cal'a.
By CUTLER McALLISTER, *D. C.*

U. S. MARSHAL'S OFFICE,
San Francisco, September 3d, 1859.

I hereby certify that I have this day made personal service of this citation upon Mrs. Mary Hart, widow and executrix of Wm. Hart, Sen., deceased, and upon J. D. Stevenson, former law partner of the said Wm. Hart, Sen., by delivering to each of them personally a certified copy of this citation, the said J. D. Stevenson refusing to admit service.

P. L. SOLOMON,
U. S. Marshal.

Assignment of Errors.

S. H. CLARK et al. vs. WILLIAM HART, Jr. } Supreme Court of the U. S. Writ of Error from the Circuit Court of California.

S. H. Clark and others, plaintiffs in the writ of error sued out by them to the judgment of the circuit court of California, sitting at the city and county of San Francisco, and State of California, by John Wilson, their attorney, come and suggest here to the Supreme Court of the United States, and assign the following errors in the records and proceedings in the above entitled cause—the

same appear upon the face of the record and proceedings thereof filed in this case—and pray the said Supreme Court to examine the same, and reverse and hold the decisions and judgment of the said court null, and that the judgment of the court and the finding of the jury may be reversed, and whatever else is just and proper in the premises, as they will ever pray; and for a more particular description of the said errors, he proceeds to state them as follows:

1st. The said circuit court erred in allowing the plaintiffs to read to the jury the petition of the Mesas for, and the papers and proceedings under it, with the grants made to them, (which will be found on the record from page 73 to 85,) because they furnish no evidence of title or color of title to the two leagues said therein to be granted.

2d. The court erred in allowing the plaintiff to read to the jury the petition of Stevenson to the board of private land claims, the decision of the board and district court, and the dismissal of the appeal by the Atto. Gen'l, (found at pages 86 to 94 of the record,) because these papers were no evidence of title or color of title in this action.

3d. The court erred in allowing the deeds from the Mesas to J. D. Stevenson to be read to the jury, (found at pages of this record 95 to 100,) because they furnished no evidence of title or color of title in the plaintiff.

4th. The court erred in allowing the plaintiff to read to the jury the deed from Stevenson to the Mesas and others, (found at pages of this record from 108 to 111,) because the same furnished no evidence of title or color of title in the plaintiff.

5th. The court erred in allowing the plaintiff to read Brown's deed to the Mesas and others, (found on pages from 111 to 117,) because the same furnished no evidence of title or color of title in the plaintiff.

6th. The court erred in allowing the plaintiff to read Stevenson's deed to Hart, the plaintiff, (found on pages 117 to 122,) because it was no evidence of title or color of title in the plaintiff.

7th. The court erred in allowing Stevenson to be examined as a witness on the part of the plaintiff, because he was incompetent by interest, by covenants to plaintiff and others, and was interested in the event of this suit, and is guarantor of the plaintiff, and also to Moss, his mortgagee.

(See the record from page 118 to 1822; his deed to Hart, pl'ff; his testimony on page 123 to ; also see his mortgage to Moss, pages 124 to 134.)

8th. The court erred in allowing the plaintiff to read Hammond's deposition, and the other evidence given, on pages 134 to 142 of this record, because the same was irrelevant and incompetent and did not conduce to show either title or color of title to the land sued for to be in the plaintiff.

9th. The court erred in refusing the defendants to prove their settlements, claim of pre-emptions, and their building houses by each on his claim, prior to 1st March, 1856, as the same was offered on pages 153 and 154.

10th. The court erred in allowing the plaintiff to give in evidence the deed from Haight to Palmer and Gilman, and from the latter to Palmer, and from Palmer to J. D. Stevenson, (as found on pages 154 to 165.)

See also Stevenson's deed to Palmer, Gilman and Haight, given in evidence by the def'ts on pages 142 to 152, showing Stevenson's assignment of the property in dispute, because the def'ts say Stevenson's deed to them was a trust, and that one without all the trustees could not convey.

11th. The court erred in giving the jury the three first instructions asked by the plaintiff, (on pages 166 and 167 of the record.)

12th. That the court erred in giving each of the 10 instructions given by the judge, (found on pages 175 to 180.)

13th. The court erred in refusing to give to the jury the 2, 3, 6, 7, 9, 10, 11, 13, 14, 15, 18, 19, 24 and 25, and each of them, asked by the defendants below, which are found on pages from 168 to 180.

14th. The court erred in refusing to give the first instruction asked by defendants without amendment, (see page 168.)

15th. The court erred in giving a joint judgment against all the defendants, when the proof shows they entered and enjoyed separately, under separate claims, and entered at several times, and were in no way joint holders and trespassers, as the court decided they offered to show their separate claims and entries.

And therefore these plaintiffs in error in this case, by their said attorney, Wilson, say, in all these assignments there is manifest error, as well as many other errors seen and contained in said record, for all and each of which they pray the said judgment may be set aside and held null, and whatsoever is just and proper in the premises.

JOHN WILSON,
Atto. for the Pl'ffs in Error and Def'ts below.

Filed 20th Dec'r, 1859.

IN THE

Supreme Court of the United States.

SAMUEL L. BACON, et. al,	No. 75.
vs.	December Term.
WILLIAM HART, JR.	1861.

ERROR TO THE CIRCUIT COURT OF CALIFORNIA.

The proceeding in the Circuit Court was an action under the California code in the nature of an ejectment to recover possession of the western half of the rancho "Medanos," known now as the "New York Rancho," or the "Mesa" grant, which was conceded on the 26th day of November, 1839, to José Antonio and José Miguel Mesa, by Governor Alvarado.

On the trial in the Circuit Court, the plaintiff below proved possession of the rancho Medanos by the Mesas, and those claiming under them from the year 1839; and of the west half of the rancho by Jonathan D. Stevenson, under a conveyance of the Mesas, from 1849 until the entry and trespass of the defendants; Hart, the defendant in error, claims under Stevenson.

The plaintiff also put in proof as color of title and to support his possession, and to show the extent of his claim:

1st. An *expediente* or Mexican record of the grant by Governor Alvarado of the rancho Medanos made by Governor Alvarado to José Antonio and Jose Miguel Mesa, dated the 26th of November, 1839.

2d. A CONFIRMATION OR APPROVAL OF THAT GRANT BY THE DEPARTMENTAL ASSEMBLY, ON THE 11TH OF MAY, 1840.

3d. A petition by Stevenson and others, grantees of the Mesas, to the Board of Land Commissioners of California, for confirmation, under the act of 1851, and a decree of confirmation by the Board, dated the 19th of June, 1855.

4th. A decree by the District Court of the United States, affirming the decision of the Board.

5th. A stipulation by the Attorney General that the decree of the District Court should be final.

6th. Subsequent conveyances transferring the title of Stevenson in the premises to the plaintiff, William Hart, Jr., which are set forth in the record and referred to.

All the evidence in relation to the Mexican title was objected to, and also the subsequent deeds and transfers; but the objection was overruled by the Court.

Possession, cultivation, extensive improvements, and large expenditures in buildings and improvements, to the value of from $30,000 to $50,000 was also proved.

An effort was made by the defendants to show an outstanding title in Palmer, Haight, and Gilman, under a trust deed by Stevenson, for the security and payment of his debts, which was ruled out by the Court.

Stevenson, who was examined as a witness for the plaintiff, was objected to as incompetent, because of his covenants in a mortgage to Joseph Mora Moss, which objection was overruled.

The defendants offered proof, that they were "American citizens, over twenty-one years of age, and had settled on their claims, as described in their pleas, before the 1st

March, 1856, and had each cultivated portions of their quarter sections, named in their pleas, and built a house thereon, and now reside thereon, claiming to hold a pre-emption for the same, and that the United States had made no sectional survey of the land in dispute."

This testimony was objected to, and ruled out as showing no title.

Exceptions were taken by the defendants to all the rulings of the Court admitting evidence for the plaintiff and overruling the offers on the part of the defendant; and also to the instructions granted or refused. Verdict and judgment were rendered for the plaintiff.

The main points of the case are—

1st. Whether the evidence offered by the plaintiff was sufficient to support a recovery.

2d. Whether the pre-emption rights, set up by the defendants, constitute any defense.

BRIEF OF POINTS AND AUTHORITIES FOR DEFENDANT IN ERROR.

I. The evidence offered by the plaintiff was admissible, and sufficient in law to support his recovery against the defendants.

Boyreau vs. Campbell, et. al., 1 McAllister's Reports, 119.

Turner vs. Aldridge, ib., 229.

Love vs. Simmes' Lessee, 9 *Wheaton*, 515, 524.

Swift vs. Tysen, 16 Peters, 1.

Beauregard vs. The City of New Orleans, 18 Howard, 497.

Christy vs. Scott, 14 Howard, 282.

Ladd vs. Stevenson, 1 California Rep., 18.

Brown vs. O'Connor, 1 California Rep., 421.
Hutchinson vs. Perley, 4 California Rep., 33.
Hicks vs. Davis, 4 California Rep., 67.
Winans vs. Christy, 4 California Rep., 70.
Boquette vs. Caulfield, 4 California Rep., 278.

II. The evidence offered by the defendants constituted no defense, and was properly rejected.

Act of Congress, March 3, 1807, entitled an act to prevent settlements being made on lands ceded to the United States, until authorized by law. 2 U. S. Stat., 445.

Act of Congress, entitled an act to provide for the survey of public lands in California, the granting of pre-emption rights, and for other purposes. 10 *U. S. Stat.*, 246.

Boyreau vs. Campbell, 1 *McAllister Rep.*, 130.

III. A general verdict and judgment against all the defendants was proper under the judicial practice in California.

Greer vs. Mesas, 24 *Howard Rep.*, 268.

EDWIN M. STANTON,

For Appellee.

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